# Health & Families Council

**Tuesday, March 28, 2006**
**9:00 AM – 10:15 AM**
**Reed Hall**

**Meeting Packet**

**Allan G. Bense**
**Speaker**

**Anna Holliday "Holly" Benson**
**Chair**

# Council Meeting Notice

## HOUSE OF REPRESENTATIVES

**Speaker Allan G. Bense**

### Health & Families Council

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| **Start Date and Time:** | Tuesday, March 28, 2006 09:00 am |
| **End Date and Time:** | Tuesday, March 28, 2006 10:15 am |
| **Location:** | Reed Hall (102 HOB) |
| **Duration:** | 1.25 hrs |

**Consideration of the following bill(s):**

HB 351 CS Community Residential Homes by Lopez-Cantera
HB 527 CS Suicide Prevention by Gibson, H.
HB 699 CS Health Care by Negron
HB 1027 CS Biomedical Research by Hasner, Coley
HB 7051 Certificates of Need by Elder & Long-Term Care Committee

Pursuant to Rule 7.22(c), amendments by non-appointed members must be filed by 5:00 p.m., Monday, March 27, 2006.

The Chair requests that members of the Council file amendments by 5:00 p.m., Monday, March 27, 2006.

**NOTICE FINALIZED on 03/24/2006 16:08 by ISEMINGER.BOBBYE**

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 351 CS Community Residential Homes
**SPONSOR(S):** Lopez-Cantera
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 1006

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Future of Florida's Families Committee | 6 Y, 2 N, w/CS | Davis | Collins |
| 2) Elder & Long-Term Care Committee | 6 Y, 0 N | DePalma | Walsh |
| 3) Growth Management Committee | 9 Y, 0 N, w/CS | Strickland | Grayson |
| 4) Health & Families Council | | Davis | Moore |
| 5) | | | |

### SUMMARY ANALYSIS

House Bill 351 CS amends existing law relating to community residential homes to prevent the location of such facilities within 1,000 feet of each other. Specifically, the bill expands the definition of "community residential homes" to include facilities licensed by numerous agencies rather than just the Department of Children and Family Services (DCFS). The included agencies are the Department of Elderly Affairs (DOEA), the Agency for Persons with Disabilities (APD), the Department of Juvenile Justice (DJJ), and the Agency for Health Care Administration (AHCA).

Existing law includes certain notification requirements for community residential homes with seven to fourteen residents. The bill changes the notification requirement to shift the responsibility to notify local government regarding the location of other such facilities from DCFS to the "sponsoring agency" (the entity seeking approval of the facility). Additionally, the bill extends those notification requirements to include facilities with six or fewer residents.

The bill also amends certain terms to carry out the intention of this bill. Specifically, the bill deletes the definition of "department" which in existing law is defined to mean the DCFS and replaces it with the terms "licensing entity" or "licensing entities" as appropriate. The bill defines "licensing entity or licensing entities" as DCFS, DOEA, APD, DJJ, or AHCA.

Further, the bill amends the reference to "district administrator," which applies only to DCFS in existing law, and replaces it with "licensing entity" and "sponsoring agency" where applicable, to conform to the expansion of the definition of "community residential home" and the shifted notification responsibilities.

One potential constitutional concern is whether or not discrimination may be claimed by persons with developmental disabilities and other protected classes of persons. See CONSTITUTIONAL ISSUES section of the analysis for complete analysis of case law, the Americans with Disabilities Act (ADA), and the Fair Housing Act.

The bill does not appear to have a fiscal impact on state or local governments.

The effective date of this bill is July 1, 2006.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

*Provide limited government*: This bill increases the notification responsibility of the sponsoring agency of a community residential home and of four governmental entities.

*Promote personal responsibility*: This bill requires the sponsoring agency to provide the most recently compiled data to the local government for a community residential home with six or fewer residents. To the extent that the required provision of data by a sponsor of a community residential home to a local government potentially makes the siting of a home more difficult or limits availability of such homes, there could be an effect on choices and alternatives for residents of community residential homes.

B. EFFECT OF PROPOSED CHANGES:

**Effect of Proposed Changes**

This bill amends ch. 419, F.S., relating to "community residential homes" to prevent the location of such homes within 1,000 feet of each other.

Definition of "community residential homes": The bill expands the definition of "community residential home" to include dwelling units that serve clients of the Department of Elderly Affairs (DOEA), the Agency for Persons with Disabilities (APD), the Department of Juvenile Justice (DJJ), or a dwelling unit licensed by the Agency for Health Care Administration (AHCA). Under existing law, the definition only includes licensed dwelling units serving clients of the Department of Children and Family Services (DCFS).

Definition of "licensing entity or licensing entities": The bill defines "licensing entity or licensing entities" as DCFS, DOEA, APD, DJJ, or AHCA.

References to "department": The bill deletes the definition of "department" which in existing law is defined to mean the DCFS. The bill replaces the term "department" with "licensing entity," "licensing entities," or "sponsoring agency" as may be applicable to reflect the expanded definition of "community residential homes" and the responsible entities. "Licensing entity or licensing entities" is defined above. "Sponsoring agency" is defined in existing law as "an agency or unit of government, a profit or nonprofit agency, or any other person or organization which intends to establish or operate a community residential home."

Required notification: The bill also amends existing law to extend the required local government notification to apply to an agency sponsoring a community residential home of six or fewer residents. Existing law requires notification for proposed "community residential homes" of 7 to 14 residents. The bill requires that, prior to occupancy, the sponsoring agency provide certain data to the local government where the community residential home is proposed to be located. The required data is the most recently published data compiled that identifies all community residential homes in the district in which the proposed site is located. This data is supplied in order to show that no other community residential home with six or fewer residents is within a radius of 1,000 feet of the proposed home. The purpose of this change is to eliminate the clustering of community residential homes with six or fewer residents within a community.

Under existing law, notification to the local government is bifurcated between the sponsoring agency and the department (DCFS). The bill now requires that the sponsoring agency provide local government with "the most recently published data compiled that identifies all community residential

homes in the district in which the proposed site is to be located." Under existing law, either the sponsoring agency or licensing entity is required to provide such notice. The bill now requires that the sponsoring agency must notify the local government that the home is licensed.

Under existing law, a statement of the need for the community residential homes must be supplied by the "district administrator" of DCFS. The term "district administrator" is amended to "licensing entity" and "sponsoring agency" where applicable to conform to the expansion of the definition of "community residential homes." Further, the bill removes the requirement of the "licensing entity" to provide a statement of need to the local government for a "community residential home" as not all of the governmental entities now identified in the bill conduct a needs assessment.

**Background**

Historically, living placement options for the physically disabled, handicapped, developmentally disabled, mentally ill, and children were primarily state institutions or nursing homes. However, that began to change in Florida in the 1980s as the Florida Legislature began to develop a policy of community integration as an effective treatment method for those in need. The history of community integration has not always been an easy transition, but great strides have been made in combating discriminatory policies against the mentally ill, elderly, handicapped and children in need. These changes can largely be attributed to the development of federal law that focused on protecting these protected classes of individuals.

In 1989, House Bill 1269 (chapter 89-372, L.O.F.) established the framework for what is currently section 419.001, Florida Statutes. One of the purposes was to prevent or reduce inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care. The goal was simply to follow a deinstitutionalization model for placement of persons with special needs in the least restrictive setting and for the encouragement of placement of such individuals in community residential facilities. The state has a significant interest in the development of community residential homes because of the service they provide. These homes provide a living environment for many different types of people. They include children who may be dependent and are placed in licensed child care settings. Some group homes may serve the developmentally disabled in a licensed residential facility; while other group homes provide a living environment for the elderly in an adult congregate living facility. All of these services and many more that may be offered provide a service that is needed in some capacity in Florida.

Currently, section 419.001, Florida Statutes, requires the local government to approve the location of certain residential homes which provide for a living environment for seven to fourteen unrelated residents. When a site for a community residential home has been selected by a sponsoring agency in an area zoned for multifamily use, the agency shall notify the Chief Executive Officer of the local government in writing. The local government then has up to 60 days to respond and if no response is given within 60 days, the sponsoring agency may establish the home at the site in question. Currently, homes with six or fewer residents shall be deemed a single family unit without approval by the local government, provided that the home does not exist in a 1,000 feet radius of another six or fewer resident home.

In January 2004, the DCFS reported that over 5,000 individuals with developmental disabilities lived in foster care facilities and group home facilities licensed by DCFS and operated by private providers. There are approximately 1,000 licensed facilities which serve as alternatives to institutional care, enabling individuals to live in a family-like setting in the community where necessary supports are available.

Section 419.001(1)(d), Florida Statutes, defines a "resident" as a:

- "Frail elder" pursuant to section 400.618, Florida Statutes, which includes a functionally impaired person who is over the age of 60 who has physical and mental limitations that restricts the ability of that person to live independently and perform normal activities of daily living.

- "Physically disabled or handicapped person" pursuant to section 760.22(7)(a), Florida Statutes, which includes a person who has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment.

- "Developmentally disabled person" pursuant to section 393.063, Florida Statutes, which includes a person with a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

- Nondangerous "mentally ill person" pursuant to section 394.455(18), Florida Statutes, which includes an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology. For the purposes of this part, the term does not include retardation or developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.

- "Child" who is found to be dependent by the court pursuant to section 39.01(14), Florida Statutes, and a "child" in need of services pursuant to sections 984.03(9) and 985.03(8), Florida Statutes.

Section 393.062, Florida Statutes, provides in part:

> "....The Legislature declares that the goal of this act, to improve the quality of life of all developmentally disabled persons by the development and implementation of community-based residential placements, services, and treatment, cannot be met without ensuring the availability of community residential opportunities for developmentally disabled persons in the residential areas of this state. The Legislature, therefore, declares that all persons with developmental disabilities who live in licensed community homes shall have a family living environment comparable to other Floridians. The Legislature intends that such residences shall be considered and treated as a functional equivalent of a family unit and not as an institution, business, or boarding home."

C. SECTION DIRECTORY:

**Section 1**: Amends s. 419.001(1) and (2), F. S., regarding site selection of community residential homes.

**Section 2**: Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could potentially restrict the ability of private organizations to provide cost-effective residential homes to certain residents because of the added requirement to furnish data to the local government prior to occupancy.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

One potential constitutional concern is whether or not discrimination may be claimed by persons with developmental disabilities and other defined protected classes.

In *Dornbach v. Holley*, 854 So.2d 211, (Fla 2d DCA 2002), owners of residential real property in a subdivision brought action in the lower court seeking injunctive relief, alleging that proposed use of subdivision property as a group home for four to six developmentally disabled adults violated the subdivision's restrictive covenants. The lower court entered an order granting a permanent injunction. The owners of the property to be used as a group home appealed. The court held that enforcing deed restrictions against a group home was impermissibly discriminatory. In finding this ruling the court discussed the argument that the enforcement of a restrictive covenant is contrary to the United States Fair Housing Act of 1988 (FHAA). This act added handicapped persons to those protected from discrimination in buying and renting facilities.

The Florida Legislature essentially codified the Federal Act when it enacted the Florida Fair Housing Act in sections 760.20 - 760.37, F.S. Section 760.23(7)(b), F.S., provides that, "It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available." The statute states further that discrimination is also defined to include a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

In considering the application of the Florida Fair Housing Act, the federal courts have determined that one may be guilty of discrimination in any one of three ways. First, the Act prohibits intentional discriminatory conduct towards a handicapped person. *See Martin v. Constance,* 843 F.Supp. 1321 (E.D.Mo.1994). Second, the Act prohibits incidental discrimination, that is, an act that results in making

property unavailable to a handicapped person. *Id.* Third, the Act prohibits an act that fails to make a reasonable accommodation that would allow a handicapped person the enjoyment of the chosen residence. *See Advocacy Ctr. for Persons with Disabilities, Inc. v. Woodlands Estates Ass'n,* 192 F.Supp.2d 1344 (M.D.Fla.2002). The Court was persuaded that, given the similarity of language and purpose in the federal and the Florida legislation, this three-pronged approach applies equally to the Florida Fair Housing Act. The record in *Dornbach* does show that by enforcing the restriction in question, incidental discrimination results since the residence is made unavailable for the handicapped. *See Rhodes v. Palmetto Pathway Homes, Inc.,* 303 S.C. 308, 400 S.E.2d 484 (1991). Finally, public policy as stated in section 419.001(2), Florida Statutes and in section 393.062, Florida Statutes, supports the premise that the group home in *Dornbach* is the functional equivalent of a single-family residential unit and as such does not pose any threat to the purpose justifying the deed restrictions at issue. Thus, to refuse to waive these restrictions is to refuse to offer a reasonable accommodation, which also amounts to discrimination as defined by statute. *See Advocacy Ctr.,* 192 F.Supp.2d 1344. (M.D. Fla. 2002)

In July 1999, the U.S. Supreme Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective community-based services. *Olmstead v. L. C.*, 527 U.S. 581 (1999). The *Olmstead* decision interpreted Title II of the Americans with Disabilities Act (ADA) and its implementing regulation, requiring states to administer their services, programs, and activities "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." The ADA and the *Olmstead* decision apply to all qualified individuals with disabilities regardless of age.

B. RULE-MAKING AUTHORITY:

The bill does not provide any additional rulemaking authority to the identified departments and agencies; however, the entities have sufficient rulemaking authority in existing law to carry out current licensing functions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill as amended appears to resolve previously identified drafting issues and comments provided to the first committee of reference concerning the original filed version of the bill.

Other Comments

None

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 11, 2006, the Future of Florida's Families Committee adopted a Committee Substitute. The Committee Substitute changed the notification requirement for sponsoring agencies at the time of home occupancy to state that the sponsoring agency or the licensing entity rather than the DCFS must notify the local government that the home is licensed by the department. The need for this change stems from the fact that more than one state agency licenses community residential homes, so to single out DCFS inaccurately reflects the current licensing situation.

On February 7, 2006, the Growth Management Committee adopted a Committee Substitute (CS). The CS replaces references to the "department" with "licensing entity," "licensing entities," or "sponsoring agency" where applicable throughout the chapter to conform to the expansion of the definition of "community residential home" and the deletion of the definition of "department." The CS also provides a definition for the terms "licensing entity or licensing entities." Additionally, the CS shifts the burden of notification for a proposed "community residential home" solely to the "sponsoring agency." Further, the CS removes the requirement of the "district administrator" to provide a statement of need to the

local government for a "community residential home" to conform with the inclusion of governmental entities now identified in the bill that are not currently required to conduct a needs assessment. The CS also replaces the term "district administrator," which applies only to DCFS, with "licensing entity" and "sponsoring agency" where applicable throughout the chapter to conform to the expansion of the definition of "community residential home." The CS replaces the references to "district" with "within the jurisdictional limits of the local government" to define the area to be addressed by the required notification.

CHAMBER ACTION

The Growth Management Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to community residential homes; amending s. 419.001, F.S.; revising, providing, and deleting definitions; requiring the sponsoring agency of a community residential home to provide certain information and notification regarding siting requirements to a local government under certain circumstances; providing for the licensing agency to deny or nullify a license to operate a community residential home under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1), (2), (3), and (6) of section 419.001, Florida Statutes, are amended to read:

419.001 Site selection of community residential homes.--

(1) For the purposes of this section, the following definitions shall apply:

(a) "Community residential home" means a dwelling unit licensed to serve residents, as defined in paragraph (d), who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, or the Department of Children and Family Services or a dwelling unit licensed by the Agency for Health Care Administration~~,~~ which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents.

(b) "Licensing entity" or "licensing entities" means the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Children and Family Services, or the Agency for Health Care Administration, all of which are authorized to license a community residential home to serve residents, as defined in paragraph (d).

~~(b) "Department" means the Department of Children and Family Services.~~

(c) "Local government" means a county as set forth in chapter 7 or a municipality incorporated under the provisions of chapter 165.

(d) "Resident" means any of the following: a frail elder as defined in s. 400.618; a physically disabled or handicapped person as defined in s. 760.22(7)(a); a developmentally disabled person as defined in s. 393.063; a nondangerous mentally ill

person as defined in s. 394.455(18); or a child as defined in s. 39.01(14), s. 984.03(9) or (12), or s. 985.03(8).

(e) "Sponsoring agency" means an agency or unit of government, a profit or nonprofit agency, or any other person or organization which intends to establish or operate a community residential home.

(2) Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use for the purpose of local laws and ordinances. Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning without approval by the local government, provided that such homes shall not be located within a radius of 1,000 feet of another existing such home with six or fewer residents. Such homes with six or fewer residents shall not be required to comply with the notification provisions of this section; provided~~, however,~~ that, prior to occupancy, the sponsoring agency provides the local government with the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located in order to show that no other community residential home is within a radius of 1,000 feet of the proposed home with six or fewer residents. At the time of home occupancy, the sponsoring agency must notify ~~or the department notifies~~ the local government ~~at the time of home~~

~~occupancy~~ that the home is licensed by the licensing entity ~~department~~.

(3)(a) When a site for a community residential home has been selected by a sponsoring agency in an area zoned for multifamily, the agency shall notify the chief executive officer of the local government in writing and include in such notice the specific address of the site, the residential licensing category, the number of residents, and the community support requirements of the program. Such notice shall also contain a statement from the licensing entity ~~district administrator of the department~~ indicating ~~the need for and~~ the licensing status of the proposed community residential home and specifying how the home meets applicable licensing criteria for the safe care and supervision of the clients in the home. The sponsoring agency ~~district administrator~~ shall also provide to the local government the most recently published data compiled from the licensing entities that identifies all community residential homes within ~~in~~ the jurisdictional limits of the local government ~~district~~ in which the proposed site is to be located. The local government shall review the notification of the sponsoring agency in accordance with the zoning ordinance of the jurisdiction.

(b) Pursuant to such review, the local government may:

1. Determine that the siting of the community residential home is in accordance with local zoning and approve the siting. If the siting is approved, the sponsoring agency may establish the home at the site selected.

2. Fail to respond within 60 days. If the local government fails to respond within such time, the sponsoring agency may establish the home at the site selected.

3. Deny the siting of the home.

(c) The local government shall not deny the siting of a community residential home unless the local government establishes that the siting of the home at the site selected:

1. Does not otherwise conform to existing zoning regulations applicable to other multifamily uses in the area.

2. Does not meet applicable licensing criteria established and determined by the licensing entity ~~department~~, including requirements that the home be located to assure the safe care and supervision of all clients in the home.

3. Would result in such a concentration of community residential homes in the area in proximity to the site selected, or would result in a combination of such homes with other residences in the community, such that the nature and character of the area would be substantially altered. A home that is located within a radius of 1,200 feet of another existing community residential home in a multifamily zone shall be an overconcentration of such homes that substantially alters the nature and character of the area. A home that is located within a radius of 500 feet of an area of single-family zoning substantially alters the nature and character of the area.

(6) The licensing entity ~~department~~ shall not issue a license to a sponsoring agency for operation of a community residential home if the sponsoring agency does not notify the local government of its intention to establish a program, as

required by subsection (3). A license issued without compliance with the provisions of this section shall be considered null and void, and continued operation of the home may be enjoined.

Section 2. This act shall take effect July 1, 2006.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 527 CS Suicide Prevention
**SPONSOR(S):** Gibson and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1008

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Future of Florida's Families Committee | 7 Y, 0 N, w/CS | Preston | Collins |
| 2) Governmental Operations Committee | 5 Y, 0 N, w/CS | Brown | Williamson |
| 3) Transportation & Economic Development Appropriations Committee | 14 Y, 0 N | McAuliffe | Gordon |
| 4) Health & Families Council | | Preston | Moore |
| 5) | | | |

## SUMMARY ANALYSIS

The bill creates the Statewide Office for Suicide Prevention in the Office of Drug Control within the Executive Office of the Governor.

Subject to a specific appropriation, the bill requires the director of the Office of Drug Control to employ a coordinator for the Statewide Office for Suicide Prevention and specifies the education, experience, and skills to consider when hiring such coordinator. Duties of the coordinator include facilitating an interagency workgroup, reviewing suicide prevention programs to identify innovative models, developing and maintaining an Internet website related to suicide prevention, and assisting in the development of public awareness and media campaigns.

The bill also creates a Suicide Prevention Coordinating Council of 27 members in the Office of Drug Control. The coordinating council must create a statewide plan for suicide prevention and create a state interagency workgroup in order to incorporate state agency plans for suicide prevention into the statewide plan.

The bill specifies the membership, terms of office, and the duties of both the council and the workgroup. The coordinating council must make findings and recommendations regarding suicide prevention programs and activities, and must report annually to the Governor and the Legislature.

The bill authorizes one FTE and appropriates $100,000 from the General Revenue Fund to the Office of Drug Control to implement the provisions of the bill for fiscal year 2006-2007.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill provides for one additional FTE: a coordinator for the Statewide Office for Suicide Prevention, and a $100,000 budget to implement the provisions of the bill for fiscal year 2006-2007. The bill provides no additional staff or administrative support for the required work of the Statewide Office, the Coordinating Council, or the interagency workgroup. If existing staff within the Office of Drug Control assume those duties, it will increase the work responsibilities of those individuals.

The bill creates a new coordinating council with 27 members. The bill requires state employees to serve on both the coordinating council and the interagency workgroup, which adds to their work-related responsibilities. The coordinating council and the coordinator must report annually on their activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

B. EFFECT OF PROPOSED CHANGES:

Background – Suicide

Florida currently ranks 15th in the nation for the number of suicides. There were 2,294 suicides in the state during 2003, making it the ninth leading cause of death for the overall population. Suicide is the third leading cause of death for 15-24 year olds, the second leading cause of death for 25-34 year olds, and the fifth leading cause of death for 35-44 year olds.[1]

While suicide is often characterized as a response to a single event or set of circumstances, suicide is, in fact, an outcome of complex interactions among neurobiological, genetic, psychological, social, cultural, and environmental risk and protective factors. The factors that contribute to any particular suicide are diverse; therefore, it is generally believed that efforts related to prevention must incorporate multiple approaches.[2]

The Florida Youth Emotional Development and Suicide Prevention Act, passed by the Legislature in 1984, declared the prevention of suicide by youths to be a priority of the state. The Act was considered landmark legislation, which resulted in Florida being recognized nationally as one of a handful of states passing legislation to establish a statewide program to promote positive development of youths and prevent suicide through coordinated educational efforts at the state and local levels. As a result of the legislation, the Department of Education, Department of Law Enforcement, and Department of Health and Rehabilitative Services (now the Department of Children and Family Services) worked together to develop ways to inform people about the problem of youth suicide and actions that should be taken to prevent suicides.[3]

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[1] Florida Vital Statistics, Annual Report. 2003.

[2] U.S. Department of Health and Human Services. National Strategy for Suicide Prevention: Goals and Objectives for Action. 2001.

[3] All of the activities of these state agencies, and of the district and state task forces, including the development of a training guide, were accomplished by using existing resources and with the help of volunteers, including parent survivors of youth suicide. *See* Florida Youth Suicide Prevention Study, Report to the Florida State Legislature. Louis de la Parte Florida Mental Health Institute, University of South Florida. 1999.

In 2000, the Governor directed the Office of Drug Control[4] to assist in decreasing the incidence of suicide in Florida. The director of the Office of Drug Control convened a workgroup to establish an infrastructure for a state suicide prevention task force, now called the Florida Task Force on Suicide Prevention. In January 2005, the task force released a Statewide Suicide Prevention Strategy paper to provide policy direction to state and community leaders in order to decrease the incidence of youth suicide in Florida. The paper contained three stated goals:

- To decrease the incidence of suicide in Florida by one third (from approximately 14.1 per 100,000 in 2001 to approximately 9.4 per 100,000 by the end of 2010);
- To decrease the incidence of teen suicide in Florida by one third (from approximately 9.5 per 100,000 in 2001 to approximately 6.3 per 100,000 by the end of 2010); and
- To decrease the incidence of elder suicide in Florida by one third (from approximately 20 per 100,000 in 2001 to approximately 13.3 per 100,000 by the end of 2010).[5]

Background – Organizational Structure

Chapter 14, F.S., describes the organizational structure of the Executive Office of the Governor (EOG).[6] Section 397.332, F.S. creates the Office of Drug Control inside the EOG. Chapter 20, F.S., defines several types of advisory bodies:

| Name | Duration | Additional Comment |
|---|---|---|
| "Council" or "Advisory Council" | "[O]n a continuing basis..." | Created by specific statutory enactment and intended to focus on a specific function or program area. Provides recommendations and policy alternatives. |
| "Committee" or "Task Force" | 1 year (without specific statutory enactment); 3 years (with specific statutory enactment) | Appointed to study a particular problem and recommend a solution. Existence terminates upon completion of assignment. |
| "Coordinating Council" | Not explicitly stated. | An interdepartmental advisory body – one department has primary responsibility but other agencies have an interest. |
| "Commission" | Not explicitly stated. | Exercises quasi-legislative or quasi-judicial power, and its members must generally be confirmed by the Legislature. |

Pursuant to s. 20.052, F.S., the creation of any new advisory body requires the following findings or requirements:

- It must be necessary and beneficial to the furtherance of a public purpose.
- It must be terminated by the Legislature when it is no longer necessary and beneficial to the furtherance of a public purpose.

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[4] The Florida Office of Drug Control was created in 1999 within the Executive Office of the Governor (Chapter 99-187, Laws of Florida) to coordinate Florida's efforts related to the reduction of drug abuse and its consequences to the state. *See* s. 397.332, F.S.

[5] Florida Suicide Prevention Strategy. Office of Drug Control, Executive Office of the Governor. January 2005. Available online at: http://www.myflorida.com/myflorida/government/governorinitiatives/drugcontrol/pdfs/suicide_prevent.pdf

[6] Chapter 20, F.S., governs the organizational structure of the Executive Branch. Section 20.04, F.S., governs the creation of additional entities while the creation of advisory bodies is governed by s. 20.03, F.S., which provides substantive definitions for several types of advisory bodies and by s. 20.052, F.S., which sets forth requirements for all advisory bodies.

- The Legislature and the public must be kept informed of its activities and expenses.
- It meets a statutorily defined purpose.
- Its powers and responsibilities conform to the definitions for governmental units in s. 20.03, F.S. (outlined in the table above).
- Its members, unless expressly provided otherwise in the State Constitution, are appointed for 4-year staggered terms.
- Its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.

In addition, the agency head or the Governor appoints private citizen members of a committee or council. Private citizen members of a commission or board of trustees are appointed by the Governor and confirmed by the Legislature, and are subject to the dual-office-holding prohibition of s. 5(a), Art. II of the State Constitution. All meetings of any entity are public, and minutes must be kept. Public records are maintained by the agency under which the entity is created. [7]

The Bill

The bill creates the Statewide Office for Suicide Prevention in the Office of Drug Control (office) within the Executive Office of the Governor and specifies duties for the office including:

- Developing a network of community-based programs to improve suicide prevention initiatives;
- Implementing the statewide plan prepared by the Suicide Prevention Coordinating Council;
- Increasing public awareness concerning topics relating to suicide prevention;
- Coordinating education and training curricula in suicide prevention efforts for professionals who may have contact with persons at risk of committing suicide; and
- Directing an interagency workgroup within the Suicide Prevention Coordinating Council.

Subject to a specific appropriation, the bill requires the director of the office to employ a coordinator of the Statewide Office for Suicide Prevention and specifies the education, experience, and skills to consider when hiring such coordinator. Duties of the coordinator include:

- Facilitating an interagency workgroup;
- Reviewing suicide prevention programs to identify innovative models;
- Developing and maintaining an Internet website related to suicide prevention; and
- Assisting in the development of public awareness and media campaigns.

The bill also creates a Suicide Prevention Coordinating Council (coordinating council) of 27 members in the office. The coordinating council is required, among other things, to create a statewide plan for suicide prevention and create a state interagency workgroup in order to incorporate state agency plans for suicide prevention into such statewide plan. The bill specifies the membership, terms of office, and the duties of both the coordinating council and the workgroup. The coordinating council must make findings and recommendations regarding suicide prevention programs and activities, and must report annually to the Governor and the Legislature.

C. SECTION DIRECTORY:

**Section 1.** Creates s. 397.3335, F.S., to create the Statewide Office for Suicide Prevention.

**Section 2.** Creates s. 397.3336, F.S., to create the Suicide Prevention Coordinating Council.

**Section 3.** Authorizes one FTE and appropriates $100,000 from the General Revenue Fund to the Office of Drug Control to implement the provisions of the bill for fiscal year 2006-2007.

**Section 4.** Provides for an effective date of July 1, 2006.

[7] Section 20.052(1) – (5), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill authorizes the coordinator to seek grants and other methods of funding from the federal government and nongovernmental organizations. If such activities are successful, the Office of Suicide Prevention will receive additional revenue to further its stated activities.

2. Expenditures:

The bill authorizes one FTE and appropriates $100,000 from the General Revenue Fund to the Office of Drug Control to implement the provisions of the bill for fiscal year 2006-2007.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In a report of the Committee on Pathophysiology and Prevention of the Adolescent and Adult Suicide Board on Neuroscience and Behavioral Health, it was stated that the emotional cost of suicide is great and that for family and friends of suicide victims, the personal loss is most important. Nonetheless, an additional economic cost that society incurs with suicides consists of four factors:

- Medical expenses of emergency intervention and non-emergency treatment. These costs are not borne by the health care industry alone, but by all of society through higher health care costs that are ultimately passed on to workers and taxpayers;
- The lost and/or reduced productivity of people suffering from a suicide attempt;
- The lost productivity of the loved ones grieving a suicide; and
- Lost wages of those who commit suicide.[8]

Estimates of the economic costs of suicide vary, but a reduction in the number of suicide attempts and completed suicides would result in a reduction in costs related to medical treatment and hospitalizations, costs related to disability, and lost earnings.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

[8] S. Goldsmith, T. Pellmar, et al. Reducing Suicide: A National Imperative. The National Academies Press. 2002.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Chapter 20, F.S., provides for the organizational structure of the executive branch of state government and provides a uniform nomenclature for entities within that branch. The Legislature is not bound by the definitions contained in that chapter and may create executive branch entities that do not conform to the standard; however, consistency with that uniform nomenclature provides for greater consistency across state government entities. Section 20.04, F.S., currently does not contain a general definition for "office," although there are some departments explicitly created with offices.[9] Typically, such "offices" do not formally contain other "offices," but "units" or "sections." This bill creates an "office" (Statewide Office for Suicide Prevention) within an "office" (Office of Drug Control) within an "office" (the Executive Office of the Governor).

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Governmental Operations Committee adopted three amendments to the bill which:

- Increase the number of members of the Suicide Prevention Coordinating Council (council) from 26 to 27 members by adding a representative from the Florida Council for Community Mental Health to the council membership. This increases the number of appointees appointed by the director of the Office of Drug Control from 12 to 13; and
- Provide for the staggering of the members' four-year terms.

The bill was reported favorably with committee substitute.

[9] See, for example, s. 20.04(4)(5) and (6), Florida Statutes, where the Departments of Children and Family Services, Corrections and Transportation are specifically created to be outside of the uniform structure provided by chapter 20, Florida Statutes.

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to suicide prevention; creating s. 397.3335, F.S.; creating the Statewide Office for Suicide Prevention in the Office of Drug Control; providing the goals and objectives of the office; creating the position of statewide coordinator for the statewide office, contingent upon a specific appropriation; specifying the education and experience requirements for the position of coordinator; detailing the duties and responsibilities of the coordinator; authorizing the Statewide Office for Suicide Prevention to seek and accept grants or funds from any source to support its operation; creating s. 397.3336, F.S.; creating the Suicide Prevention Coordinating Council within the Office of Drug Control; providing the scope of activities for the coordinating council; creating an interagency workgroup for state agencies within the coordinating council in order to coordinate state agency plans for suicide prevention; authorizing the coordinating council to assemble an ad hoc committee to advise the

coordinating council; requiring a report to the Governor and Legislature; providing for membership on and meetings of the coordinating council; providing per diem and travel expenses for coordinating council members; providing an appropriation and authorizing a position; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 397.3335, Florida Statutes, is created to read:

397.3335 Statewide Office for Suicide Prevention.--

(1)(a) The Statewide Office for Suicide Prevention is created in the Office of Drug Control within the Executive Office of the Governor.

(b) The statewide office shall develop a network of community-based programs to improve suicide prevention initiatives. The network shall identify and work to eliminate barriers that impede providing suicide prevention services to individuals who are at risk of suicide.

(c) The network of community-based programs shall consist of stakeholders advocating suicide prevention, including, but not limited to, not-for-profit suicide prevention organizations, faith-based suicide prevention organizations, law enforcement agencies, first responders to emergency calls, suicide prevention community coalitions, schools and universities, mental health agencies, substance abuse agencies, health care providers, and school personnel.

(2) The statewide office shall, within available resources:

(a) Implement the statewide plan prepared by the Suicide Prevention Coordinating Council.

(b) Build a network of community-based programs to integrate suicide prevention initiatives into program activities.

(c) Increase public awareness concerning topics relating to suicide prevention.

(d) Coordinate education and training curricula in suicide prevention efforts for law enforcement personnel, first responders to emergency calls, health care providers, school employees, and other persons who may have contact with persons at risk of suicide.

(e) Direct an interagency workgroup within the Suicide Prevention Coordinating Council to prepare a suicide prevention communication plan among state agencies. The communication plan must be incorporated into the council's statewide plan.

(3) Contingent upon a specific appropriation, the director of the Office of Drug Control shall employ a coordinator for the Statewide Office for Suicide Prevention. In selecting the coordinator, the director of the Office of Drug Control should consider whether a candidate has:

(a) The following education and employment experience:

1. A bachelor's degree in social work, psychology, sociology, counseling, public health, or a closely related field and 5 or more years of work experience in behavioral health care or a closely related field.

2. A master's or a doctoral degree in social work, psychology, sociology, counseling, public health, or a closely related field and 2 or more years of work experience in behavioral health or a closely related field.

(b) The following skills:

1. Significant professional experience in social services, mental health, or a closely related field.

2. Knowledge of group behavior and dynamics, methods of facilitation, community development, behavioral health treatment and prevention programs, and community-based behavioral health problems.

3. Experience in working with community groups and constituents that are diverse and representative of the gender, ethnic, and racial populations in this state.

4. Experience in writing grant proposals and technical reports.

(4) The coordinator shall work under the direction of the director of the Office of Drug Control to achieve the goals and objectives set forth in this section. The coordinator shall:

(a) Facilitate an interagency workgroup within the Suicide Prevention Coordinating Council to integrate state agency programs for suicide prevention into a unified statewide plan.

(b) Review local, state, and national suicide prevention programs for examples of innovative suicide prevention models. If innovative models are discovered, the coordinator shall prepare a report to describe the feasibility of implementing some or all of the innovative models in this state. The report must be filed with the President of the Senate, the Speaker of

the House of Representatives, and the Suicide Prevention Coordinating Council after review and approval of the report by the director of the Office of Drug Control. The innovative models, and the feasibility of their implementation in this state, shall be evaluated by the Suicide Prevention Coordinating Council, which shall file a report with the President of the Senate, the Speaker of the House of Representatives, and the Governor if the council determines that legislation is necessary to implement an innovative model.

(c) Develop and maintain an Internet website with links to appropriate suicide prevention resource documents, suicide hotlines, state and community mental health agencies, and appropriate national suicide prevention organizations.

(d) Identify and disseminate information regarding crisis services for suicide prevention.

(e) Join with stakeholders in suicide prevention to develop public awareness and media campaigns in each county directed towards persons who are at risk of suicide.

(f) Provide technical assistance to educational activities for residents of this state relating to suicide prevention.

(g) Cooperate with school districts to develop training and counseling programs for school-based suicide prevention activities. The coordinator and school districts must also develop a method by which to evaluate each prevention training and counseling program.

(h) Join with stakeholders in suicide prevention to develop education and training programs for suicide prevention. The education and training programs must be directed first to

persons who have face-to-face contact with individuals who may be at risk of suicide. The training must assist persons to recognize when an individual is at risk of suicide and how to properly refer those individuals to treatment or support services.

(i) Review current research data and findings to identify at-risk populations, factors relating to suicide, and suicide prevention activities and disseminate this research to the Suicide Prevention Coordinating Council to develop strategies for preventing suicide.

(j) Develop and submit proposals to agencies of the state, the Federal Government, and nongovernmental organizations for funding suicide prevention activities.

(5) The Statewide Office for Suicide Prevention may seek and accept grants or funds from any federal, state, or local source to support its operation and defray the expenses incurred in its operation and implementation.

Section 2. Section 397.3336, Florida Statutes, is created to read:

397.3336 Suicide Prevention Coordinating Council; creation; membership; duties.--There is created within the Office of Drug Control a Suicide Prevention Coordinating Council. The council shall develop strategies for preventing suicide.

(1) SCOPE OF ACTIVITY.--The Suicide Prevention Coordinating Council is a coordinating council as defined in s. 20.03(9) and shall:

(a) Advise the Statewide Office for Suicide Prevention regarding the development of a statewide plan for suicide prevention, with the guiding principle being that suicide is a preventable problem. The statewide plan must:

1. Align and provide direction for statewide suicide prevention initiatives.

2. Establish partnerships with state and private agencies to promote public awareness of suicide prevention.

3. Address specific populations in this state who are at risk for suicide.

4. Improve access to help individuals in acute situations.

5. Identify resources to support the implementation of the statewide plan.

(b) Create an interagency workgroup within the council in order to incorporate state agency plans for suicide prevention into the statewide plan. The interagency workgroup must include, but need not be limited to:

1. The Secretary of Elderly Affairs, or his or her designee.

2. The Secretary of Health, or his or her designee.

3. The Commissioner of Education, or his or her designee.

4. The Secretary of Health Care Administration, or his or her designee.

5. The Secretary of Juvenile Justice, or his or her designee.

6. The executive director of the Department of Law Enforcement, or his or her designee.

7. The Secretary of Children and Family Services, or his or her designee.

8. The Secretary of Corrections, or his or her designee.

9. The executive director of the Department of Veterans' Affairs, or his or her designee.

10. The director of the Agency for Workforce Innovation, or his or her designee.

(c) Assemble an ad hoc advisory committee with membership from outside the council when necessary in order for the council to receive advice and assistance in carrying out its responsibilities.

(d) Advise the Statewide Office for Suicide Prevention.

(e) Make findings and recommendations regarding suicide prevention programs and activities. The council shall prepare an annual report and present it to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2007, and each year thereafter. The annual report must describe the status of existing and planned initiatives identified in the statewide plan for suicide prevention and any recommendations arising therefrom.

(2) MEMBERSHIP.--The Suicide Prevention Coordinating Council shall consist of 27 members.

(a) Thirteen members shall be appointed by the director of the Office of Drug Control and shall represent the following organizations:

1. The Substance Abuse and Mental Health Corporation, Inc., described in s. 394.655.

2. The Florida Association of School Psychologists.

3. The Florida Sheriffs Association.

4. The Suicide Prevention Action Network USA.

5. The Florida Initiative for Suicide Prevention.

6. The Florida Suicide Prevention Coalition.

7. The Alzheimer's Association.

8. The Florida School Board Association.

9. Volunteer Florida, Inc.

10. Florida AARP.

11. The Florida Alcohol and Drug Abuse Association.

12. The Florida Counseling Association.

13. The Florida Council for Community Mental Health.

(b) The following state officials shall be appointed to the coordinating council:

1. The Secretary of Elderly Affairs, or his or her designee.

2. The Secretary of Health, or his or her designee.

3. The Commissioner of Education, or his or her designee.

4. The Secretary of Health Care Administration, or his or her designee.

5. The Secretary of Juvenile Justice, or his or her designee.

6. The Secretary of Corrections, or his or her designee.

7. The executive director of the Department of Law Enforcement, or his or her designee.

8. The executive director of the Department of Veterans' Affairs, or his or her designee.

9. The Secretary of Children and Family Services, or his or her designee.

10. The director of the Agency for Workforce Innovation, or his or her designee.

(c) The Governor shall appoint four additional members to the coordinating council. The appointees must have expertise critical to the prevention of suicide or represent an organization that is not already represented on the coordinating council.

(d) Council members shall be appointed to staggered terms of 4 years each, in accordance with s. 20.052. Any vacancy on the coordinating council shall be filled in the same manner as the original appointment, and any member appointed to fill a vacancy occurring because of death, resignation, or ineligibility for membership shall serve only for the unexpired term of the member's predecessor. A member is eligible for reappointment.

(e) Members of the coordinating council shall serve without compensation. Any member of the coordinating council who is a public employee is entitled to reimbursement for per diem and travel expenses as provided in s. 112.061.

(3) MEETINGS.--

(a) The director of the Office of Drug Control shall be a nonvoting, ex officio member of the coordinating council and shall act as chair.

(b) The coordinating council shall meet at least quarterly or upon the call of the chair. The council meetings may be held via teleconference or other electronic means.

(c) Public organizations shall participate and cooperate with the coordinating council.

Section 3. One full-time equivalent position is authorized and the sum of $100,000 is appropriated from the General Revenue Fund to the Office of Drug Control for the purpose of implementing this act during the 2006-2007 fiscal year.

Section 4. This act shall take effect July 1, 2006.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 699 CS Health Care
**SPONSOR(S):** Negron and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1216

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Health Care Regulation Committee | 7 Y, 4 N, w/CS | Bell | Mitchell |
| 2) Health Care General Committee | 10 Y, 0 N, w/CS | Ciccone | Brown-Barrios |
| 3) Health & Families Council | | Bell AJB | Moore |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

HB 699 w/CS amends ss. 458.348 and 459.025, F.S., to provide increased physician supervision of Advanced Registered Nurse Practitioners (ARNPs) and Physician Assistants (PAs). The bill provides criteria regarding the number of offices a physician may supervise depending on the type of health care services offered in such offices, and exempts certain licensed facilities from the requirements of this bill.

The bill requires physicians who receive referrals to advise patients as to their attending physician. The bill also requires that physicians review initial patient records and provide such information regarding the patient's initial visit to the primary care provider. Further, the bill requires physicians to post a notice in their satellite offices regarding the availability hours within such offices.

The bill increases the requirements of the Board of Nursing to more actively review nurse protocols and to post these protocols on the ARNP's profile.

There is no fiscal impact associated with this bill.

The effective date of the bill is upon becoming law.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill limits the total number of physician offices a physician may open based on the type of care provided to patients and specialty of the physician. The bill expands certain duties of the Board of Nursing to require more frequent review of nurse protocols.

B. EFFECT OF PROPOSED CHANGES:

HB 699 w/CS amends ss 458.348 and 459.025, F.S., to provide increased physician supervision of Advanced Registered Nurse Practitioners (ARNPs) and Physician Assistants (PAs) by stipulating the number and type of offices a physician may supervise. Certain licensed health care facilities would be exempt from the provisions of this bill. Specifically, creating section 459.025, F.S., establishes formal supervisory relationships, standing orders, and established protocols, notices and standards between Osteopathic physicians and emergency medical technicians or paramedics or advanced registered nurse practitioners and mirrors formal supervisory relationships established by physicians referenced in chapter 458.

The bill provides that a physician providing primary health care services may supervise no more than four offices in addition to the physician's primary office. A physician specialist may supervise no more than two offices in addition to the physician specialist's primary office. Dermatology offices other than the primary practice location, must submit the location of their satellite offices to the Board of Medicine.

The bill exempts certain facilities as follows:

- Facilities licensed pursuant to chapter 395;
- Facilities run in conjunction with a college of medicine or nursing or an accredited graduate medical or nursing education program;
- Nursing homes;
- Assisted living facilities;
- Continuing care facilities;
- Retirement communities;
- Rural health clinics;
- Homes for the elderly and disabled;
- Services provided in federal or state facilities.

The bill provides for additional patient information and requires physicians who receive referrals to advise patients as to their attending physician. The bill also requires that physicians review initial patient records and provide feedback regarding the patient's initial visit to the primary care provider, within 10 business days. Further, the bill requires physicians to post a notice in their satellite offices regarding the availability hours within such offices.

The bill increases the requirements of the Board of Nursing to more actively review nurse protocols and that protocols be included in the ARNP's profile.

PRESENT SITUATION

SUPERVISION STANDARDS

The health care professionals referenced in the bill are all regulated differently by statute and rule and have varied supervisory relationships with physicians.

**Supervision Standards for Advanced Registered Nurse Practitioners**

Nurses are regulated in their own practice act. Nurses are licensed and regulated by the Board of Nursing pursuant to part I of chapter 464, F.S. There are approximately 9,500 Advanced Registered Nurse Practitioners (ARNPs) in Florida.

ARNPs practice under a protocol with a supervising physician and are not required to be under direct supervision. There is no limit on the number of ARNPs that a physician may supervise at any one time. ARNPs may practice in locations without the supervising physician on premises.[1] A 2005 Florida Board of Nursing study determined that 90% of nursing protocols have one physician supervising one or two ARNPS. The study also concluded that less that 2% of nurse protocols have one physician supervising four or more ARNPs. Almost all, 99%, of the ARNPs and supervising physicians are located within the same metropolitan area (roughly a 50-mile radius of an urban center).[2]

ARNPs perform medical acts of diagnosis, treatment, and operation pursuant to a protocol between the ARNP and a Florida-licensed medical doctor, osteopathic physician, or dentist. The degree and method of supervision is determined by the ARNP and the supervisor, must be appropriate for prudent health care providers under similar circumstances, and must be specifically identified in a written protocol. Unless these rules set a different level of supervision for a particular act, general supervision is required.[3] The number of ARNPs to be supervised must be limited to insure that an acceptable standard of medical care is rendered in consideration of: risk to patient, educational preparation, specialty, and experience of parties to the protocol, complexity and risk of the procedures, practice setting, and availability of the supervisor.

**Supervision Standards for Anesthesiologist Assistants (a form of specialty nursing)**

Anesthesiologist Assistants or Certified Registered Nurse Anesthesiologists (CRNAs) are a specialized form of Advanced Registered Nurse Practitioner that requires a masters degree. CRNAs are licensed under part I of the Nurse Practice Act, chapter 464, F.S. Every CRNA must enter into a supervisory relationship with a physician or dentist; and must file a written protocol describing the relationship based on criteria set forth in chapters 458, 459, and 466, F.S. The supervising physician must only delegate tasks and procedures to the CRNA which are within the supervising physician's scope of practice, and the CRNAs can work in any setting that is within the scope of practice of the supervisor's practice. CRNAs personally administer 65% of all anesthetics given to patients each year in the United States.[4]

Under facility licensure requirements of s. 395.0191, F.S., CRNAs working in ambulatory surgery centers or hospitals must be supervised by a physician or a dentist.

**Supervision Standards for Paramedics & Emergency Medical Technicians**

Paramedics and emergency medical technicians are regulated under ch. 401, F.S., Medical Transportation and Services. They are also referenced in s. 458.348, F.S. There are approximately 18,000 paramedics and 28,000 emergency medical technicians (EMTs) in Florida. Each paramedic and EMT employed within an Emergency Medical Services (EMS) system must operate under the direct supervision of a physician medical director, or indirectly by standing orders and/or protocols.[5] Each EMS agency employs or contracts with a physician medical director to provide this medical oversight and quality assurance. The larger EMS providers in Florida have over 1,000 EMTs and paramedics on staff, all of them working under one medical director.

Medical directors must supervise and assume direct responsibility for the medical performance of the EMTs and paramedics, and must perform duties including advising, consulting, training, counseling, and overseeing of services. This includes appropriate quality assurance but does not include

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[1] Rule 64B8-35, Florida Administrative Code.
[2] Florida Board of Nursing, Study of ARNP Protocols, November 1, 2005.
[3] The written protocol signed by all parties represents the mutual agreement of the supervising physician and the ARNP and must include information defined by Rule 64B9-4, Florida Administrative Code, and s. 458.348(2), F.S.
[4] American Association of Nurse Anesthetists, 2006.
[5] Chapter 64E-2, Florida Administrative Code.

administrative or managerial functions. Each medical director is required to establish a quality assurance committee to provide reviews of all EMTs and paramedics operating under the director's supervision.[6]

The Emergency Medical Services Advisory Council was created for the purpose of acting as the advisory body to the EMS program. The Council's role includes:

- Identify and make recommendations to the Department of Health (DOH) concerning the appropriateness of suggested changes to statute and administrative rules; and
- To provide technical support to DOH in the areas of EMS and trauma systems design, technology, drugs and dosages, medical protocols, training requirements, and other aspects of procedure.[7]

The Division of Emergency Medical Operations has noted that limiting the number of allied health practitioners that can practice under the authority of a single physician could significantly impact the daily operations of an EMS service. According to the Division, while the implementation of the bill alone would not directly impact the EMS community, the rule language required by the bill may have a tremendous impact on the way EMS is designed and operated statewide.

**Supervision Standards for Physician Assistants**

Physician assistants (PAs) are regulated under ss. 458.347 and 459.022, F.S. There are approximately 3,000 licensed PAs in Florida. PAs may practice under the direct or indirect supervision of an MD or DO. A physician may supervise up to four PAs at any one time and the supervising physician must be qualified in the medical treatment areas delegated to a PA.[8] The "primary supervising physician" assumes responsibility and legal liability for the services rendered by the PAs at all times. "Direct supervision" entails the physical presence of the supervising physician on the premises so that he or she is immediately available to the PA when needed. "Indirect supervision" requires reasonable proximity between the supervising physician and the PA and requires the ability to communicate by telecommunications.[9]

There is a Council on Physician Assistants that reports to the Board of Medicine. The Council's duties include:

- Recommendation of the licensure of PAs to the Department of Health (DOH); and
- Development of rules regulating the use of PAs by physicians (proposed rules submitted by the council must be approved by both medical and osteopathic boards).

The council is comprised of five members including three physicians appointed by the chairperson of the Board of Medicine, one physician appointed by the chairperson of the Board of Osteopathic Medicine, and a PA appointed by the secretary of the department or his or her designee. At least two of the members appointed to the council must be physicians who supervise PAs in their practice.[10]

BACKGROUND

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[6] Section 401.265, F.S

[7] Section 401.245, F.S. The council has up to 15 members, and representatives include physicians, EMS administrators, paramedics, EMTs, emergency nurse, hospital administrators, air ambulance service representatives, educators, and laypersons who are in no way connected with emergency medical services and one of whom is a representative of the elderly. Ex officio members of the advisory council from state agencies include, but are not limited to, representatives from the Department of Education, the Department of Management Services, the State Fire Marshal, the Department of Highway Safety and Motor Vehicles, the Department of Transportation, and the Department of Community Affairs.

[8] Sections 458.347 and 459.022, F.S.

[9] Rules for Medical Practice, Chapter 64B8-30, Florida Administrative Code; Rules for Osteopathic Medicine, Chapter 64B15-6, Florida Administrative Code.

[10] Sections 458.347 and 459.022, F.S.

**Scope of Practice Authority**

Each year, the Florida Legislature hears bills and amendments to change the scope of practice and standards of existing professions. The legal authority to provide and be reimbursed for health care services is tied to state statutes generally referred to as *practice acts. Practice acts* establish professional "scopes of practice," and often differ from state to state. Legislative debate generally revolves around whether new or unregulated disciplines and occupations should be regulated and whether professions should be granted expanded practice authority.

**Specialized Nursing Practice**

Specialization in nursing dates from the early part of the twentieth century. Many specialty nursing programs require a master's degree and require additional state certification and licensure. Some of the primary nurse specialties are[11]:

- Critical Care;
- Nurse Anesthetists;
- Nurse Midwives;
- Public Health Nursing; and
- Nursing Education.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 456.041, F.S., regarding practitioner profiles.

**Section 2.** Amends s. 458.348, F.S., to add a new s. 458.348 (4), F.S., regarding supervision of Advanced Registered Nurse Practitioners or Physician Assistants in medical offices other than the physician's primary practice location.

**Section 3.** Amends s. 459.025, F.S., to add a new s. 459.025 (1), F.S., regarding formal supervisory relationships, standing orders and established protocols, notice and standards regarding relationships between physicians and medical technicians or paramedics or advanced registered nurse practitioners.

**Section 4.** Amends s. 464.012(3), F.S., regarding certification of advanced registered nurse practitioners.

**Section 5.** Provides that the bill shall take effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[11] Nursing Health Care. 1992 May; 13(5):254-9

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

B. RULE-MAKING AUTHORITY:

The Department of Health has sufficient rulemaking authority to implement the provision in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006 the Health Care Regulation Committee adopted five amendments and reported the bill favorably.

**Amendment 1:** Inserted a list of facilities and practitioners who are exempt from the rules promulgated as a result of the bill.
**Amendment 2 & 3:** Specified that rural health networks are exempt from the rules promulgated as a result of the bill.
**Amendment 4 & 5:** Specified that the rules promulgated as a result of the bill would apply equally to physician assistants and advanced registered nurse practitioners.

On March 22, 2006, the Health Care General Committee adopted a strike-all amendment and reported the bill favorably. The amendment:

- Removed the rule making authority of the Board of Medicine;
- Requires physician supervision of Advanced Registered Nurse Practitioners (ARNPs) and Physician Assistants (PAs);
- Provides the number and types of offices a physician may supervise.
- Provides exemptions for certain licensed health care facilities;
    - Facilities licensed pursuant to chapter 395;
    - Facilities run in conjunction with a college of medicine or nursing or an accredited graduate medical or nursing education program;
    - Nursing homes;
    - Assisted living facilities;
    - Continuing care facilities;

    - Retirement communities;
    - Rural health clinics;
    - Homes for the elderly and disabled;
    - Services provided in federal or state facilities.

- Establishes standards regarding formal supervision by physicians of emergency medical technicians or paramedics;
- Provides additional, and in some cases new, patient information and requires physicians who receive referrals to advise patients as to their attending physician;
- Requires that physicians review initial patient records and provide such information regarding the patient's initial visit to the primary care provider;
- Requires physicians to post a notice in their satellite offices regarding the physicians' available hours.
- Requires the Board of Nursing to review nurse protocols and include these protocols in the ARNP's profile.

The analysis is drafted to the committee substitute.

CHAMBER ACTION

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The Health Care General Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to health care; amending s. 456.041, F.S.; requiring certain protocols to be included in advanced registered nurse practitioner profiles; amending s. 458.348, F.S.; providing requirements and standards for physicians relating to supervisory relationships in medical office settings; providing definitions; providing exemptions; providing requirements relating to the referral of a patient by another practitioner; creating s. 459.025, F.S.; providing requirements and standards for osteopathic physicians relating to supervisory relationships in medical office settings; providing definitions; providing exemptions; providing requirements relating to the referral of a patient by another practitioner; amending s. 464.012, F.S.; providing additional requirements relating to protocols established for advanced registered nurse practitioners; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 456.041, Florida Statutes, is amended to read:

456.041 Practitioner profile; creation.--

(1)(a) The Department of Health shall compile the information submitted pursuant to s. 456.039 into a practitioner profile of the applicant submitting the information, except that the Department of Health shall develop a format to compile uniformly any information submitted under s. 456.039(4)(b). Beginning July 1, 2001, the Department of Health may compile the information submitted pursuant to s. 456.0391 into a practitioner profile of the applicant submitting the information. The protocol submitted pursuant to s. 464.012(3) shall be included in the practitioner profile of the advanced registered nurse practitioner applicant submitting the information.

Section 2. Subsections (4) and (5) are added to section 458.348, Florida Statutes, to read:

458.348 Formal supervisory relationships, standing orders, and established protocols; notice; standards.--

(4) SUPERVISORY RELATIONSHIPS IN MEDICAL OFFICE SETTINGS.--A physician who supervises an advanced registered nurse practitioner or physician assistant at a medical office other than the physician's primary practice location, where the advanced registered nurse practitioner or physician assistant is not under the onsite supervision of a supervising physician, shall comply with the standards set forth in this subsection. For the purpose of this subsection, a physician's "primary

practice location" means the address reflected on the practitioner's profile published pursuant to s. 456.041.

(a) A physician who is engaged in providing primary health care services may not supervise more than four offices in addition to the physician's primary practice location. For the purpose of this subsection, "primary health care" means health care services that are commonly provided to patients without referral from another practitioner and excludes practices providing primarily dermatologic and skin care services, including aesthetic skin care services.

(b) A physician who is engaged in providing specialty health care services may not supervise more than two offices in addition to the physician's primary practice location. For the purpose of this subsection, "specialty health care" means health care services that are commonly provided to patients with a referral from another practitioner and excludes practices providing primarily dermatologic and skin care services, including aesthetic skin care services.

(c) A physician who supervises an advanced registered nurse practitioner or physician assistant at a medical office other than the physician's primary practice location, where the advanced registered nurse practitioner or physician assistant is not under the onsite supervision of a supervising physician and the services offered at the office are primarily dermatologic or skin care services, including aesthetic skin care services, other than plastic surgery, shall comply with the standards listed in subparagraphs 1.-4. Notwithstanding the provisions of s. 458.347(4)(e)8. or any administrative rule, a physician

supervising a physician assistant shall not be required to review and sign charts or medical records prepared by the physician assistant.

1. The physician shall submit to the board the addresses of all offices where he or she is supervising an advanced registered nurse practitioner or a physician assistant that are not the physician's primary practice location.

2. The physician shall be either board certified or board eligible in dermatology or plastic surgery as recognized by the board under s. 458.3312.

3. All offices where the physician is supervising an advanced registered nurse practitioner or a physician assistant that are not the physician's primary place of practice shall be within 25 miles of the physician's primary place of practice or in a county that is contiguous to the county of the physician's primary place of practice. However, the distance between any of the offices may not exceed 75 miles.

4. The physician may only supervise one office other than the physician's primary place of practice except that until July 1, 2011, the physician may supervise up to two medical offices other than the physician's primary place of practice if the addresses of the offices are submitted to the board prior to July 1, 2006. Effective July 1, 2011, the physician may supervise only one office other than the physician's primary place of practice regardless of when the addresses of the offices were submitted to the board.

(d) A physician who supervises an office in addition to the physician's primary practice location shall conspicuously

post in each of the physician's offices a current schedule of the regular hours that the physician is present in that office and the hours that the office is open when the physician is not present.

(e) The provisions of this subsection shall not apply to health care services provided in facilities licensed under chapter 395 or in conjunction with a college of medicine, college of nursing, or an accredited graduate medical or nursing education program; to health care services provided in a nursing home licensed under part II of chapter 400, an assisted living facility licensed under part III of chapter 400, a continuing care facility licensed under chapter 651, or a retirement community consisting of independent living units and either a licensed nursing home or assisted living facility; to anesthesia services provided in accordance with law; to health care services provided in a designated rural health clinic; to health care services provided to persons enrolled in a program designed to maintain elders and persons with disabilities in a home and community-based setting; or to health care services provided in federal or state facilities.

(5) REFERRALS.--Upon initial referral of a patient by another practitioner, the physician receiving the referral shall ensure that the patient is informed of the type of license held by the physician and the type of license held by any other practitioner who will be providing services to the patient. When scheduling the initial examination or consultation following the referral, the patient may decide to see the physician or any other licensed practitioner supervised by the physician and

prior to the initial examination or consultation shall sign a form indicating the patient's choice of practitioner. The supervising physician shall review the medical record of the initial examination or consultation and ensure that a written report on the initial examination or consultation is furnished to the referring practitioner within 10 business days following the completion of the initial examination or consultation.

Section 3. Section 459.025, Florida Statutes, is created to read:

459.025 Formal supervisory relationships, standing orders, and established protocols; notice; standard.--

(1) NOTICE.--

(a) When a physician enters into a formal supervisory relationship or standing orders with an emergency medical technician or paramedic licensed pursuant to s. 401.27, which relationship or orders contemplate the performance of medical acts, or when a physician enters into an established protocol with an advanced registered nurse practitioner, which protocol contemplates the performance of medical acts identified and approved by the joint committee pursuant to s. 464.003(3)(c) or acts set forth in s. 464.012(3) and (4), the physician shall submit notice to the board. The notice shall contain a statement in substantially the following form:

I, (name and professional license number of physician) , of (address of physician) have hereby entered into a formal supervisory relationship, standing orders, or an established protocol with (number of persons) emergency medical

technician(s), (number of persons) paramedic(s), or (number of persons) advanced registered nurse practitioner(s).

(b) Notice shall be filed within 30 days of entering into the relationship, orders, or protocol. Notice also shall be provided within 30 days after the physician has terminated any such relationship, orders, or protocol.

(2) PROTOCOLS REQUIRING DIRECT SUPERVISION.--All protocols relating to electrolysis or electrology using laser or light-based hair removal or reduction by persons other than physicians licensed under this chapter or chapter 458 shall require the person performing such service to be appropriately trained and work only under the direct supervision and responsibility of a physician licensed under this chapter or chapter 458.

(3) SUPERVISORY RELATIONSHIPS IN MEDICAL OFFICE SETTINGS.--A physician who supervises an advanced registered nurse practitioner or physician assistant at a medical office other than the physician's primary practice location, where the advanced registered nurse practitioner or physician assistant is not under the onsite supervision of a supervising physician, shall comply with the standards set forth in this subsection. For the purpose of this subsection, a physician's "primary practice location" means the address reflected on the practitioner's profile published pursuant to s. 456.041.

(a) A physician who is engaged in providing primary health care services may not supervise more than four offices in addition to the physician's primary practice location. For the purpose of this subsection, "primary health care" means health care services that are commonly provided to patients without

referral from another practitioner and excludes practices providing primarily dermatologic and skin care services, including aesthetic skin care services.

(b) A physician who is engaged in providing specialty health care services may not supervise more than two offices in addition to the physician's primary practice location. For the purpose of this subsection, "specialty health care" means health care services that are commonly provided to patients with a referral from another practitioner and excludes practices providing primarily dermatologic and skin care services, including aesthetic skin care services.

(c) A physician who supervises an advanced registered nurse practitioner or physician assistant at a medical office other than the physician's primary practice location, where the advanced registered nurse practitioner or physician assistant is not under the onsite supervision of a supervising physician and the services offered at the office are primarily dermatologic or skin care services, including aesthetic skin care services, other than plastic surgery, shall comply with the standards listed in subparagraphs 1.-4. Notwithstanding the provisions of s. 459.022(4)(e)8. or any administrative rule, a physician supervising a physician assistant shall not be required to review and sign charts or medical records prepared by the physician assistant.

1. The physician shall submit to the board the addresses of all offices where he or she is supervising an advanced registered nurse practitioner or a physician assistant that are not the physician's primary practice location.

2. The physician shall be either board certified or board eligible in dermatology or plastic surgery as recognized by the board under s. 459.0152.

3. All offices where the physician is supervising an advanced registered nurse practitioner or a physician assistant that are not the physician's primary place of practice shall be within 25 miles of the physician's primary place of practice or in a county that is contiguous to the county of the physician's primary place of practice. However, the distance between any of the offices may not exceed 75 miles.

4. The physician may only supervise one office other than the physician's primary place of practice except that until July 1, 2011, the physician may supervise up to two medical offices other than the physician's primary place of practice if the addresses of the offices are submitted to the board prior to July 1, 2006. Effective July 1, 2011, the physician may supervise only one office other than the physician's primary place of practice regardless of when the addresses of the offices were submitted to the board.

(d) A physician who supervises an office in addition to the physician's primary practice location shall conspicuously post in each of the physician's offices a current schedule of the regular hours that the physician is present in that office and the hours that the office is open when the physician is not present.

(e) The provisions of this subsection shall not apply to health care services provided in facilities licensed under chapter 395 or in conjunction with a college of medicine,

college of nursing, or an accredited graduate medical or nursing education program; to health care services provided in a nursing home licensed under part II of chapter 400, an assisted living facility licensed under part III of chapter 400, a continuing care facility licensed under chapter 651, or a retirement community consisting of independent living units and either a licensed nursing home or assisted living facility; to anesthesia services provided in accordance with law; to health care services provided in a designated rural health clinic; to health care services provided to persons enrolled in a program designed to maintain elders and persons with disabilities in a home and community-based setting; or to health care services provided in federal or state facilities.

(4) REFERRALS.--Upon initial referral of a patient by another practitioner, the physician receiving the referral shall ensure that the patient is informed of the type of license held by the physician and the type of license held by any other practitioner who will be providing services to the patient. When scheduling the initial examination or consultation following the referral, the patient may decide to see the physician or any other licensed practitioner supervised by the physician and prior to the initial examination or consultation shall sign a form indicating the patient's choice of practitioner. The supervising physician shall review the medical record of the initial examination or consultation and ensure that a written report on the initial examination or consultation is furnished to the referring practitioner within 10 business days following the completion of the initial examination or consultation.

Section 4. Subsection (3) of section 464.012, Florida Statutes, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees.--

(3) An advanced registered nurse practitioner shall perform those functions authorized in this section within the framework of an established protocol, which shall be filed with the board upon biennial license renewal and within 30 days of entering into a supervisory relationship with a physician or changes to the protocol. The board shall review the protocol to ensure compliance with applicable regulatory standards for protocols. The board shall refer to the department licensees submitting protocols that are not compliant with the regulatory standards for protocols. A practitioner currently licensed under chapter 458, chapter 459, or chapter 466 shall maintain supervision for directing the specific course of medical treatment. Within the established framework, an advanced registered nurse practitioner may:

(a) Monitor and alter drug therapies.

(b) Initiate appropriate therapies for certain conditions.

(c) Perform additional functions as may be determined by rule in accordance with s. 464.003(3)(c).

(d) Order diagnostic tests and physical and occupational therapy.

Section 5. This act shall take effect July 1, 2006.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1027 CS Biomedical Research
**SPONSOR(S):** Hasner, Coley and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1826

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Health Care General Committee | 9 Y, 0 N | Ciccone | Brown-Barrios |
| 2) Health Care Appropriations Committee | 15 Y, 0 N, w/CS | Massengale | Massengale |
| 3) Health & Families Council | | Ciccone | Moore |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

House Bill 1027 CS provides legislative intent to provide funding to support grants for biomedical research in Florida with particular emphasis on cancer research and Alzheimer's disease research. The bill amends several statutes that govern state funding for biomedical research.

The bill requires that the Florida Center for Universal Research to Eradicate Disease (CURED) provide grants for cancer research to further the search for cures of cancer and authorizes the center to give preference to grant proposals that foster collaborations between institutions, researchers, and community practitioners. The bill requires that state-funded biomedical research grants be awarded on a competitive basis subject to a peer review process.

The bill establishes the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program in the Department of Health and expands the purpose of the CURED center to include providing grants through the newly established research program. The bill revises the composition of the CURED center's advisory council and establishes four-year terms for advisory board members and requirements for the election of a chair and for periodic board meetings.

The bill discontinues the automatic annual distribution of alcoholic beverage tax collections from the State Treasury for the Center for Universal Research to Eradicate Disease, the James and Esther King Biomedical Research Program, and the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute and provides for an annual appropriation for these programs. The bill requires the Department of Health to submit an annual report on the William G. "Bill" Bankhead, Jr. and David Coley Cancer Research Program. Further, the bill requires the annual operating budget for the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute be submitted to the Governor and Cabinet, Senate President, House Speaker and State Board of Education chair and requires additional information regarding the center's expenditure of funds and research.

The bill includes appropriations from the General Revenue Fund as follows:

- $6 million to the James and Esther King Biomedical Research Program.
- $9 million to the CURED center.
- $15 million to the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute.

The bill provides for an effective date of July 1, 2006.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Limited Government**—The bill adds a new grant program and expands the administrative and oversight responsibility of the Department of Health.

**Empower families**—Florida families should benefit from greater access to information and health care services derived from cancer and Alzheimer's disease clinical trials and resultant new therapies.

B. EFFECT OF PROPOSED CHANGES:

The Florida Center for Universal Research to Eradicate Disease is located within the University of South Florida. The purpose of the center is to coordinate, improve, expand, and monitor all biomedical research programs within the state, facilitate funding opportunities, and foster improved technology transfer of research findings into clinical trials and widespread public use. The goal of the center is to find cures for cancer and other diseases, including Alzheimer's disease. The bill creates the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program within the Department of Health thereby expanding the purpose of the CURED center to provide grants through this newly established Bankhead-Coley Cancer Research Program. The bill also adds the Bankhead-Coley Program to the purposes of the Biomedical Research Trust Fund. The bill replaces the automatic annual appropriation for the FSU Chiropractic School with a $9 million non-recurring appropriation from the General Revenue Fund to the Biomedical Research Trust Fund for the Bankhead-Coley Cancer Research Program.

The bill revises the composition of the center's advisory council to provide for a 16-member board instead of the current 54-member board by requiring one member from the Florida Research Consortium rather than all 37 members of the consortium board of directors.

The Florida Cancer Council is located within the Department of Health. The purpose of the council is to establish the state as a center of excellence for cancer research by expanding cancer research capacity, improving research and treatment through greater clinical trial participation, and reducing the impact of cancer in disparate groups. The council must work in concert with the Florida Center for Universal Research to Eradicate Disease (CURED) to ensure that the goals of the center are advanced. The bill provides that the council will identify ways to attract new research talent and national grant-producing researchers to cancer research facilities "in this state" rather than "Florida-based" facilities. The effect of this change is to expand the types of facilities that may be awarded grants. Grant-funding decisions would be based on a peer-review system according to specific criteria.

The Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute is located within the University of South Florida. The purpose of the center is to encourage research, education, treatment, prevention and the early detection of Alzheimer's disease. The bill revises the information contained within the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute's annual report to include a description of the expenditure of all funds, information concerning research conducted or funded by the center, and the expected or actual result of such research. Further, the center's chief executive officer is required to submit an annual operating budget to the Governor, Cabinet, President of the Senate, Speaker of the House of Representatives, and State Board of Education chair. The bill also limits the membership of the board of directors to 16 from the current possible 21 members. The bill provides a competitive, peer-reviewed grant application process for Alzheimer's disease research. The bill also replaces the automatic $15 million distribution from alcoholic beverage tax collection with a $15 million non-recurring appropriation from the General Revenue Fund to the Grants and Donations Trust Fund within the Department of Elderly Affairs.

The bill also reduces the Governor's appointments to the Biomedical Research Advisory Council from six to four and requires two appointments by the President of the Senate and two by the Speaker of the House of Representatives. The bill replaces the automatic $6 million distribution from alcoholic beverage tax collections with a $6 million non-recurring appropriation from the General Revenue Fund to the Biomedical Research Trust Fund.

**Background**

Cancer Research:

The emphasis that Florida places on cancer research is evidenced in the high-profile cancer related programs and funding strategies that have been established over the years. In addition, Florida recognizes the importance of a coordinated and collaborative approach to biomedical research. The scientific, humanitarian and economic value that is derived from a coordinated state, federal, and academic and private effort can not be overstated. Ultimately, biomedical research contributes to a healthier population and biomedical discoveries and the resultant products or treatments contribute to the economy of the area in which they are produced. For both health and economic reasons, governments are interested in furthering the work of biomedical researchers and in helping researchers collaborate and share resources.

Efforts in Florida relating to the coordination and development of medical research and disease prevention include the James and Esther King Biomedical Research Program, the Florida Center for Universal Research to Eradicate Disease, the Florida Cancer Council, and the Florida Dialogue on Cancer.

The James and Esther King Biomedical Research Program

The 1999 Legislature established the Lawton Chiles Endowment Fund [1] as a result of its settlements with the tobacco industry to enhance or support expansions in children's health care programs, child welfare programs, community-based health and human service initiatives, and biomedical research. Section 215.5602, Florida Statutes, establishes the James and Esther King Biomedical Research Program funded from interest earnings on the endowment fund, and provides that funds appropriated to the program are to be devoted to competitive grants and fellowships in research relating to prevention, diagnosis, and treatment of tobacco-related illnesses, including cancer, cardiovascular disease, stroke and pulmonary disease. The Biomedical Research Advisory Council in the Department of Health assists the Secretary in establishing criteria and guidelines for the competitive grant programs. Grants and fellowships are awarded on the basis of scientific merit, as determined by an open, objective peer-review process.

The Florida Center for Universal Research to Eradicate Disease

Section 381.855, Florida Statutes, creates the Florida Center for Universal Research to Eradicate Disease within the Department of Health. The purpose of the center is to coordinate, improve, expand, and monitor all biomedical research programs within the state, facilitate funding opportunities, and foster improved technology transfer of research findings into clinical trials and widespread public use. The goal of the center is to find cures for diseases such as cancer, heart disease, lung disease, diabetes, autoimmune disorders, and neurological disorders, including Alzheimer's disease, epilepsy and Parkinson's disease.

The center must hold an annual biomedical technology summit in Florida to which biomedical researchers, biomedical technology companies, business incubators, pharmaceutical manufacturers, and others around the nation and world are invited to share biomedical research findings to expedite

[1] Section 215.5601, F.S., ch. 99-167, Laws of Florida

the discovery of cures for diseases. Summit attendees are required to cover, or obtain sponsorship for, the costs of their attendance.

An advisory council, established within the center, must meet at least annually. The council consists of the members of the board of directors of the Florida Research Consortium and at least one representative from each of the following:

- The Emerging Technology Commission.
- Enterprise Florida, Inc.
- BioFlorida.
- The Biomedical Research Advisory Council.
- The Florida Medical Foundation.
- Pharmaceutical Research and Manufacturers of America.
- The Florida Tri-Agency Coalition on Smoking OR Health.
- The Florida Cancer Research Council.
- The American Cancer Society, Florida Division, Inc.
- The American Heart Association.
- The American Lung Association of Florida.
- The American Diabetes Association, South Coastal Region.
- The Alzheimer's Association.
- The Epilepsy Foundation.
- The National Parkinson's Foundation.
- The Florida Public Health Foundation, Inc.
- Scripps Florida or the entity formed in this state by the Scripps Research Institute.

Members of the council will serve without compensation and each organization represented must cover all expenses of its representative.

The Florida Cancer Council

In 2004, the Legislature created the Florida Cancer Council within the Department of Health for the purpose of making Florida a center of excellence for cancer research. [2] Section 381.921, Florida Statutes, provides the overall mission of the Florida Cancer Council and stipulates that the council must work in concert with the Florida Center for Universal Research to Eradicate Disease to ensure that the goals of the center are advanced, and must work toward dramatically improved cancer research and treatment in Florida through a number of specific efforts including expanding cancer research capacity in Florida, improving research and treatment through greater participation in clinical trials networks, and reducing the impact of cancer on disparate groups of persons.

The Florida Cancer Council membership is representative of Florida cancer centers, hospitals, and patient groups. The council is authorized to create not-for-profit corporate subsidiaries to fulfill its mission and those subsidiaries could receive, hold, invest and administer property and any monies acquired from private, local, state and federal sources and technical and professional income from the mission-related activities of the council.

The council membership is as follows:

- The Chairman of the Florida Dialogue on Cancer, who serves as the council chairman.
- The Secretary of the Department of Health, or his or her designee.
- The Chief Executive Officer of the H. Lee Moffitt Cancer Center, or his or her designee.
- The President of the University of Florida Shands Cancer Center, or his or her designee.
- The Chief Executive Officer of the University of Miami Sylvester Comprehensive Cancer Center, or his or her designee.

[2] Section 381.92, Florida Statutes, s.10, ch. 2004-2 Laws of Florida

- The Chief Executive Officer of the Mayo Clinic, Jacksonville, or his or her designee.
- The Chief Executive Officer of the American Cancer Society, Florida Division, or his or her designee.
- The President of the American Cancer Society, Florida Division Board of Directors, or his or her designee.
- The President of the Florida Society of Clinical Oncology, or his or her designee.
- The President of the American College of Surgeons, Florida Chapter, or his or her designee.
- The Chief Executive Officer of Enterprise Florida, Inc., or his or her designee.
- Five representatives from cancer programs approved by the American College of Surgeons, three of whom shall be appointed by the Governor, one by the Speaker of the House of Representatives and one by the President of the Senate.
- One member of the House of Representatives, to be appointed by the Speaker of the House of Representatives.
- One member of the Senate, to be appointed by the President of the Senate.

Appointments made by the Speaker of the House of Representatives and the President of the Senate are two-year terms concurrent with the terms of the presiding officers who make the appointments. Appointments made by the Governor are two-year terms, and the Governor may reappoint directors. Members of the council or any subsidiaries serve without compensation and each organization represented covers the expenses of its representatives.

The council issues an annual report to the Center for Universal Research to Eradicate Disease, the Governor, the Speaker of the House of Representatives, and the President of the Senate by December 15 of each year. The report contains policy and funding recommendations regarding cancer research capacity in Florida and related issues.

The Florida Dialogue on Cancer

The Florida Dialogue on Cancer (FDOC) is a collaboration of Florida leaders of hospitals, research centers, universities, professional medical groups, community-based organizations, and private business groups, and government officials. FDOC is an initiative designed to expand the state's capacity to reduce the incidence and mortality rates of cancer. The goals of FDOC are the following:

- Create a coalition that speaks with one voice on major statewide cancer issues for Florida.
- Enhance and promote Florida's capacity to conduct cancer research, professional education, clinical trials and treatment programs.
- Identify and promote the replication of best practices in providing access to cancer prevention, education, and screening, diagnosis, and treatment programs for all Floridians to reduce the disparities that exist.

The Florida Division of the American Cancer Society sponsors FDOC, which is based on the work of the National Dialogue on Cancer.

Alzheimer's Disease

Alzheimer's disease is a progressive, irreversible brain disorder with no known cause or cure. Symptoms of the disease include memory loss, confusion, impaired judgment, personality changes, disorientation, and loss of language skills. Alzheimer's disease is the most common form of irreversible dementia—symptom escalation varies from person to person and includes confusion, personality and behavior changes and impaired judgment. Most people with Alzheimer's disease become unable to care for themselves.

There is no known cure for Alzheimer's disease; however, certain medications can help relieve symptoms or slow the progression of the disease. Approximately 100,000 victims die and 360,900 new

cases of Alzheimer's disease are diagnosed each year in the United States. According to the Alzheimer's Association, the number of Americans with the disease has doubled since 1980 and current estimates reflect 4.5 million Americans have Alzheimer's disease. By 2050, it is estimated that 14 million Americans will have this disease. There are currently 396,000 people with Alzheimer's disease in Florida.

Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute

Section 1004.43, Florida Statutes, establishes the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute at the University of South Florida. The institute is governed by a not-for-profit corporation in accordance with an agreement with the State Board of Education. The corporation is managed by a board of directors consisting of the President of the University of South Florida and the chair of the State Board of Education, or his or her designee, five representatives of the state university system, and between 9-14 additional directors who are not medical doctors or state employees. The institute is administered by a chief executive officer, who serves at the pleasure of the board of directors.

The mission of the Byrd Alzheimer's Research Center is to collaborate with researchers throughout the State of Florida and the wider global research community to develop treatment to cure and prevent this disease. The Byrd Alzheimer's Research Center will conduct state of the art research in addition to serving as the site for coordinating and facilitating the state's various efforts to diagnose, treat and prevent the disease. Funding for the institute is generated through state and federal grants and other fundraising efforts.

C. SECTION DIRECTORY:

Section 1. Provides legislative intent.

Section 2. Amends s. 20.435, F.S., adding the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program to the list of purposes of the Biomedical Research Trust Fund.

Section 3. Amends s. 215.5602, F.S., relating to the membership of the Biomedical Research Advisory Council to create a new subsection (11) authorizing the council to award grants for cancer research through the Bankhead-Coley Cancer Research Program, and a new subsection (12) authorizing an annual appropriation to the James and Esther King Biomedical Research Program.

Section 4. Provides language regarding the expiration of certain appointments to the Biomedical Research Advisory Council; provides an effective date upon becoming law.

Section 5. Amends s. 381.855 (5) and creates new subsections (6) (7) and (8), F.S., relating to membership and term on the advisory council to the Center for Universal Research to Eradicate Disease (CURED); grant peer review process, and authorizing an annual appropriation to CURED for operating costs.

Section 6. Provides language regarding the expiration of certain appointments to the advisory council for the Center for Universal Research to Eradicate Disease (CURED).

Section 7. Amends s. 381.921 (1), F.S., relating to the mission and duties of the Florida Cancer Council.

Section 8. Creates s. 381.922, F.S., establishing the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program.

Section 9. Amends s. 561.121 (1), F.S., and deletes language relating to certain automatic annual distributions of alcoholic beverage tax collections from the State Treasury.

Section 10. Amends s. 1004.445 (2) and (6), F.S., revising board of directors membership to the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute and creates new subsections (8) and (12) relating to research funding and authorizes an annual appropriation to the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute.

Section 11. Provides language regarding the expiration of certain appointments to the board of directors of the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute.

Section 12. Provides a $6 million non-recurring appropriation from the General Revenue Fund to be deposited into the Biomedical Research Trust Fund for the James and Esther King Biomedical Research Program; provides a $9 million non-recurring appropriation from the General Revenue Fund to be deposited into the Biomedical Research Trust Fund for the Florida Center for Universal Research to Eradicate Disease; provides a $15 million non-recurring appropriation from the General Revenue Fund to be deposited into the Grants and Donations Trust Fund for the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute; provides for specific use of such funds.

Section 13. Provides an effective date of July 1, 2006, except as expressly provided in the act.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   The bill includes appropriations from the General Revenue Fund as follows:
   - $6 million to the James and Esther King Biomedical Research Program.
   - $9 million to the CURED center.
   - $15 million to the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute.

   The Department of Health estimates the following expenditures:

| Estimated Expenditures | 1st Year | 2nd Year (Annualized/Recur) |
|---|---|---|
| Salaries: | | |
| 1.5 Senior Attorney @$54,795 | $70,138 | $72,242 |
| 1 Administrative Secretary @$27,397 | 35,068 | 36,120 |
| 1 Program Administrator @$57,000 | 72,960 | 75,149 |
| 1 Administrative Assistant @$32,000 | 32,000 | 32,960 |
| (FTE computed w/28% fringe; 3% annual increase in 2nd year | | |
| Expenses: | | |
| 1 Std DOH professional pkg. w/maximum travel (1 FTE) | $19,097 | $15,867 |
| 2 Std DOH professional package w/limited travel (1.5 FTE) | 27,640 | 21,000 |
| 2 Std DOH support pkg. (2 FTE) | 16,300 | 10,728 |
| Sub-contracting of grant management and major grant cycle processes | 610,000 | 350,000 |
| Council Travel | 30,000 | 30,000 |
| General Office Expenses | 10,250 | 10,250 |

| | | |
|---|---|---|
| Staff Development | 5,250 | 5,250 |
| Operating Capital Outlay | | |
| 3 Std DOH professional pkg. (2 FTE) | 5,400 | - 0 – |
| 2 Std DOH support pkg. (2 FTE) | 4,200 | - 0 – |
| Human Resources Services | | |
| 5 FTEs | 1,965 | I,965 |
| Total Estimated Expenditures | $940,268 | $661,531 |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By referring to research facilities as those that are "in this state," non-state universities, not-for-profit entities, researchers, biotechnology and pharmaceutical companies and others will benefit from this bill by receiving grants from which they may develop patented or licensed intellectual property. Further, new research talent and national grant-producing researchers should be attracted to cancer research facilities in this state.

D. FISCAL COMMENTS:

The bill discontinues the annual distribution of alcoholic beverage tax collections from the State Treasury for the James and Esther King Biomedical Research Program and the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute, and provides instead for an annual appropriation by the Legislature. The bill also discontinues the annual distributions of alcoholic tax collections for the Florida State University School of Chiropractic Medicine, and provides instead an annual appropriation for the Bankhead-Coley Cancer Research Program.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

This bill has no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

No additional rule-making is required for the Department of Health to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 17, 2006, the Health Care Appropriations Committee adopted a strike-all amendment that made the following changes:

- Added the Bankhead-Coley Cancer Research Program to the purposes of the Biomedical Research Trust Fund.
- Changed the number of appointments to the Biomedical Research Advisory Council by the President of the Senate and the Speaker of the House of Representatives from one to two.
- Added the awarding of grants by the Biomedical Research Advisory Council for cancer research for the purposes of Bankhead-Coley Cancer Research Program.
- Reduced the membership of the advisory council to the CURED from 18 to 16 members.
- Added a competitive, peer-reviewed grant application process to the Bankhead-Coley Cancer Research Program for the purposes of awarding research grants.
- Provided $250,000 for operating costs out of the $6 million appropriation for the CURED, and up to 10 percent of the $9 million appropriation for administrative expenses for the Bankhead-Coley Cancer Research Program.

The analysis is drafted to the committee substitute.

CHAMBER ACTION

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The Health Care Appropriations Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to biomedical research; providing legislative intent; amending s. 20.435, F.S.; authorizing the use of funds in the Biomedical Research Trust Fund for the purposes of the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program; amending s. 215.5602, F.S.; revising the membership and the method for appointing members to the Biomedical Research Advisory Council; requiring the council to award grants for cancer research through the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program; authorizing the Legislature to annually appropriate funds to the James and Esther King Biomedical Research Program; providing for transition to new appointments; amending s. 381.855, F.S.; revising the membership of the advisory council for the Florida Center for Universal Research to Eradicate Disease; providing for terms of office and the filling of vacancies; providing for officers, meetings, and

procedures; authorizing the Legislature to annually appropriate funds to the Florida Center for Universal Research to Eradicate Disease; providing for transition to new appointments; amending s. 381.921, F.S.; revising a goal of the Florida Cancer Council; creating s. 381.922, F.S.; establishing the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program within the Department of Health; providing the purpose of the program; requiring the program to provide grants for cancer research; providing procedures for awarding cancer research grants; providing for peer-review panels; providing requirements with respect to ethical conduct and conflicts of interest; providing for public records and meetings; requiring an annual report; amending s. 561.121, F.S.; redistributing certain funds collected from taxes on alcoholic beverages; amending s. 1004.445, F.S.; revising the method of appointing and filling vacancies on the board of directors of the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute; requiring certain information in the annual report; requiring an annual operating budget; providing procedures for awarding of Alzheimer's disease research grants; providing for peer review panels; providing requirements with respect to ethical conduct, conflicts of interest, and confidentiality; providing for public records and meetings; authorizing the Legislature to annually appropriate funds to the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute; providing for transition to

new appointments; providing appropriations; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. It is the intent of the Legislature to provide funding to support grants for biomedical research in this state with the anticipation that sustained funding for biomedical research over a period of years will lead to an alleviation of human suffering from diseases such as cancer and Alzheimer's disease. It is the intent of the Legislature to dramatically reduce this state's inordinately high cancer burden, reducing both cancer incidence and mortality, while advancing scientific endeavors in this state, making this state a world-class leader in cancer research and treatment. Further, it is the intent of the Legislature to address the debilitating and deadly effects of Alzheimer's disease by supporting research in Alzheimer's disease statewide through the awarding of research grants on a competitive basis. Additionally, it is the intent of the Legislature to stimulate dramatic economic development, particularly in the biotechnology industry, through investment in this state's biomedical research.

Section 2. Paragraph (h) of subsection (1) of section 20.435, Florida Statutes, is amended to read:

20.435 Department of Health; trust funds.--

(1) The following trust funds are hereby created, to be administered by the Department of Health:

(h) Biomedical Research Trust Fund.

1. Funds to be credited to the trust fund shall consist of funds deposited pursuant to ss. ~~s.~~ 215.5601 and 381.922. Funds shall be used for the purposes of the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program and the James and Esther King Biomedical Research Program as specified in ss. 215.5602 and 288.955. The trust fund is exempt from the service charges imposed by s. 215.20.

2. Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund. The department may invest these funds independently through the Chief Financial Officer or may negotiate a trust agreement with the State Board of Administration for the investment management of any balance in the trust fund.

3. Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance of any appropriation from the Biomedical Research Trust Fund which is not disbursed but which is obligated pursuant to contract or committed to be expended may be certified by the Governor for up to 3 years following the effective date of the original appropriation.

4. The trust fund shall, unless terminated sooner, be terminated on July 1, 2008.

Section 3. Subsection (3) of section 215.5602, Florida Statutes, is amended, and subsections (11) and (12) are added to that section, to read:

215.5602 James and Esther King Biomedical Research Program.--

(3) There is created within the Department of Health the Biomedical Research Advisory Council.

(a) The council shall consist of eleven ~~nine~~ members, including: the chief executive officer of the Florida Division of the American Cancer Society, or a designee; the chief executive officer of the Florida/Puerto Rico Affiliate of the American Heart Association, or a designee; and the chief executive officer of the American Lung Association of Florida, or a designee. The ~~Governor shall appoint the~~ remaining eight ~~six~~ members of the council shall be appointed~~,~~ as follows:

1. The Governor shall appoint four members, two members with expertise in the field of biomedical research, one member from a research university in the state, and one member representing the general population of the state.

2. The President of the Senate shall appoint two members, one member with expertise in the field of behavioral or social research and one representative from a cancer program approved by the American College of Surgeons.

3. The Speaker of the House of Representatives shall appoint two members, one member from a professional medical organization and one representative from a cancer program approved by the American College of Surgeons.

~~4. One member from a research university in the state.~~

~~5. One member representing the general population of the state.~~

In making these ~~his or her~~ appointments, the Governor, the President of the Senate, and the Speaker of the House of Representatives shall select primarily, but not exclusively, Floridians with biomedical and lay expertise in the general areas of cancer, cardiovascular disease, stroke, and pulmonary disease. The ~~Governor's~~ appointments shall be for a 3-year term and shall reflect the diversity of the state's population. An appointed ~~A council~~ member ~~appointed by the Governor~~ may not serve more than two consecutive terms.

(b) The council shall adopt internal organizational procedures as necessary for its efficient organization.

(c) The department shall provide such staff, information, and other assistance as is reasonably necessary to assist the council in carrying out its responsibilities.

(d) Members of the council shall serve without compensation, but may receive reimbursement as provided in s. 112.061 for travel and other necessary expenses incurred in the performance of their official duties.

(11) The council shall award grants for cancer research through the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program created in s. 381.922.

(12) The Legislature may annually appropriate funds to the James and Esther King Biomedical Research Program for the purposes of this section.

Section 4. All appointments to the Biomedical Research Advisory Council for the James and Esther King Biomedical Research Program which were not made in accordance with s. 215.5602, Florida Statutes, as amended by this act, shall expire

June 30, 2006, but such appointees may continue to serve until their successors are appointed. This section shall take effect upon this act becoming a law.

Section 5. Subsection (5) of section 381.855, Florida Statutes, is amended, and subsections (6), (7), and (8) are added to that section, to read:

381.855 Florida Center for Universal Research to Eradicate Disease.--

(5) There is established within the center an advisory council that shall meet at least annually.

(a) The council shall consist of one representative from a Florida not-for-profit institution engaged in basic and clinical biomedical research and education which receives more than $10 million in annual grant funding from the National Institutes of Health, to be appointed by the Secretary of Health from a different institution each term, and ~~the members of the board of directors of the Florida Research Consortium and at least~~ one representative from and appointed by each of the following entities:

~~1. The Emerging Technology Commission.~~

1.~~2.~~ Enterprise Florida, Inc.

2.~~3.~~ BioFlorida.

3.~~4.~~ The Biomedical Research Advisory Council.

4.~~5.~~ The Florida Medical Foundation.

5.~~6.~~ Pharmaceutical Research and Manufacturers of America.

~~7. The Florida Tri-Agency Coalition on Smoking OR Health.~~

6.~~8.~~ The Florida Cancer Council.

7.~~9.~~ The American Cancer Society, Florida Division, Inc.

8.~~10.~~ The American Heart Association.

9.~~11.~~ The American Lung Association of Florida.

10.~~12.~~ The American Diabetes Association, South Coastal Region.

11.~~13.~~ The Alzheimer's Association.

12.~~14.~~ The Epilepsy Foundation.

13.~~15.~~ The National Parkinson Foundation.

14.~~16.~~ The Florida Public Health Foundation, Inc.

15.~~17.~~ The Florida Research Consortium ~~Scripps Florida or the entity formed in this state by The Scripps Research Institute~~.

(b) Members of the council shall serve without compensation, and each organization represented shall cover all expenses of its representative.

(6) Members shall be appointed to 4-year terms of office. The members of the advisory council shall annually elect a chair from among the members of the advisory council. Any vacancy on the advisory council shall be filled in the same manner as the original appointment.

(7) The advisory council shall meet at least annually, but may meet as often as it deems necessary to carry out its duties and responsibilities. The advisory council may take official action by a majority vote of the members present at any meeting at which a quorum is present.

(8) The Legislature may annually appropriate funds to the Florida Center for Universal Research to Eradicate Disease for operating costs.

Section 6. All appointments to the advisory council for the Florida Center for Universal Research to Eradicate Disease which were not made in accordance with s. 381.855, Florida Statutes, as amended by this act, shall expire June 30, 2006, but such appointees may continue to serve until their successors are appointed. This section shall take effect upon this act becoming a law.

Section 7. Subsection (1) of section 381.921, Florida Statutes, is amended to read:

381.921 Florida Cancer Council mission and duties.--The council, which shall work in concert with the Florida Center for Universal Research to Eradicate Disease to ensure that the goals of the center are advanced, shall endeavor to dramatically improve cancer research and treatment in this state through:

(1) Efforts to significantly expand cancer research capacity in the state by:

(a) Identifying ways to attract new research talent and attendant national grant-producing researchers to ~~Florida-based~~ cancer research facilities in this state;

(b) Implementing a peer-reviewed, competitive process to identify and fund the best proposals to expand cancer research institutes in this state;

(c) Funding through available resources for those proposals that demonstrate the greatest opportunity to attract federal research grants and private financial support;

(d) Encouraging the employment of bioinformatics in order to create a cancer informatics infrastructure that enhances information and resource exchange and integration through

researchers working in diverse disciplines, to facilitate the full spectrum of cancer investigations;

(e) Facilitating the technical coordination, business development, and support of intellectual property as it relates to the advancement of cancer research; and

(f) Aiding in other multidisciplinary research-support activities as they inure to the advancement of cancer research.

Section 8. Section 381.922, Florida Statutes, is created to read:

381.922 William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program.--

(1) The William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program, which may be otherwise cited as the "Bankhead-Coley Program," is created within the Department of Health. The purpose of the program shall be to advance progress towards cures for cancer through grants awarded through a peer-reviewed, competitive process pursuant to s. 381.855.

(2) The program shall provide grants for cancer research to further the search for cures for cancer.

(a) Emphasis shall be given to the goals enumerated in s. 381.921, as those goals support the advancement of such cures.

(b) Preference may be given to grant proposals that foster collaborations among institutions, researchers, and community practitioners, as such proposals support the advancement of cures through basic or applied research, including clinical trials involving cancer patients and related networks.

(3)(a) Applications for funding for cancer research may be submitted by any university or established research institute in

the state. All qualified investigators in the state, regardless of institutional affiliation, shall have equal access and opportunity to compete for the research funding. Collaborative proposals, including those that advance the program's goals enumerated in subsection (2), may be given preference. Grants shall be awarded by the Secretary of Health, after consultation with the Biomedical Research Advisory Council, on the basis of scientific merit, as determined by an open, competitive peer-review process that ensures objectivity, consistency, and high quality. The following types of applications shall be considered for funding:

1. Investigator-initiated research grants.

2. Institutional research grants.

3. Collaborative research grants, including those that advance the finding of cures through basic or applied research.

(b) In order to ensure that all proposals for research funding are appropriate and are evaluated fairly on the basis of scientific merit, the Secretary of Health, in consultation with the council, shall appoint a peer-review panel of independent, scientifically qualified individuals to review the scientific content of each proposal and establish its priority score. The priority scores shall be forwarded to the council and must be considered in determining which proposals shall be recommended for funding.

(c) The council and the peer-review panel shall establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflicts of interest. A member of the council or panel may not participate in any discussion or

decision with respect to a research proposal by any firm, entity, or agency with which the member is associated as a member of the governing body or as an employee or with which the member has entered into a contractual arrangement. Meetings of the council and the peer-review panels are subject to chapter 119, s. 286.011, and s. 24, Art. I of the State Constitution.

(4) By December 15 of each year, the Department of Health shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report indicating progress towards the program's mission and making recommendations that further its purpose.

Section 9. Subsection (1) of section 561.121, Florida Statutes, is amended to read:

561.121 Deposit of revenue.--

(1) All state funds collected pursuant to ss. 563.05, 564.06, and 565.12 shall be paid into the State Treasury and disbursed in the following manner:

(a) ~~1.~~ Two percent of monthly collections of the excise taxes on alcoholic beverages established in ss. 563.05, 564.06, and 565.12 shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund to meet the division's appropriation for the state fiscal year.

~~2. Beginning July 1, 2004, there is annually distributed $15 million to the Grants and Donations Trust Fund within the Department of Elderly Affairs, and these funds are annually appropriated to support a contract with the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute at the University of South Florida for the purposes of conducting research,~~

~~developing and operating integrated data projects, and providing assistance to memory disorder clinics as established in s. 430.502.~~

~~3. Beginning July 1, 2004, there is annually distributed $6 million to the Biomedical Research Trust Fund within the Department of Health, and these funds are annually appropriated to the James and Esther King Biomedical Research Program. From these funds, up to $250,000 shall be available annually for the operating costs of the Florida Center for Universal Research to Eradicate Disease.~~

~~4. Beginning July 1, 2004, there is annually distributed $9 million to be paid by warrant drawn by the Chief Financial Officer upon the State Treasury to Florida State University for the School of Chiropractic Medicine. Notwithstanding the provisions of chapter 216, until the School of Chiropractic Medicine is completely staffed and fully operational, these funds may be used for any purpose by the university.~~

(b) The remainder of the funds collected pursuant to ss. 563.05, 564.06, and 565.12 ~~collection~~ shall be credited to the General Revenue Fund.

Section 10. Subsections (2) and (6) of section 1004.445, Florida Statutes, are amended, present subsections (8), (9), and (10) are renumbered as subsections (9), (10), and (11), respectively, and new subsections (8) and (12) are added to that section, to read:

1004.445 Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute.--

(2)(a) The State Board of Education shall enter into an agreement for the utilization of the facilities on the campus of the University of South Florida to be known as the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute, including all furnishings, equipment, and other chattels used in the operation of those facilities, with a Florida not-for-profit corporation organized solely for the purpose of governing and operating the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute. This not-for-profit corporation, acting as an instrumentality of the state, shall govern and operate the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute in accordance with the terms of the agreement between the State Board of Education and the not-for-profit corporation. The not-for-profit corporation may, with the prior approval of the State Board of Education, create either for-profit or not-for-profit corporate subsidiaries, or both, to fulfill its mission. The not-for-profit corporation and its subsidiaries are authorized to receive, hold, invest, and administer property and any moneys acquired from private, local, state, and federal sources, as well as technical and professional income generated or derived from practice activities of the institute, for the benefit of the institute and the fulfillment of its mission.

(b)~~1.~~ The affairs of the not-for-profit corporation shall be managed by a board of directors who shall serve without compensation. The board of directors shall consist of the President of the University of South Florida and the chair of the State Board of Education, or their designees, five ~~5~~ representatives of the state universities, and nine ~~no fewer~~

~~than 9 nor more than 14~~ representatives of the public who are neither medical doctors nor state employees. Each director who is a representative of a state university or of the public shall be appointed to serve a term of 3 years. The chair of the board of directors shall be selected by a majority vote of the directors. Each director shall have only one vote.

~~2. The initial board of directors shall consist of the President of the University of South Florida and the chair of the State Board of Education, or their designees; the~~ Of the five university representatives, ~~of whom~~ one shall be appointed by the Governor, two by the President of the Senate, and two by the Speaker of the House of Representatives; and of the nine public representatives, ~~of whom~~ three shall be appointed by the Governor, three by the President of the Senate, and three by the Speaker of the House of Representatives. ~~Upon the expiration of the terms of the initial appointed directors, all directors subject to 3-year terms of office under this paragraph shall be appointed by a majority vote of the directors and the board may be expanded to include additional public representative directors up to the maximum number allowed.~~ Any vacancy in office shall be filled in the same manner as the original appointment ~~for the remainder of the term by majority vote of the directors~~. Any director may be reappointed.

(6) The institute shall be administered by a chief executive officer, who shall be appointed by and serve at the pleasure of the board of directors of the not-for-profit corporation, and who shall exercise the following powers and duties, subject to the approval of the board of directors:

(a) The chief executive officer shall establish programs that fulfill the mission of the institute in research, education, treatment, prevention, and early detection of Alzheimer's disease; however, the chief executive officer may not establish academic programs for which academic credit is awarded and which culminate in the conferring of a degree, without prior approval of the State Board of Education.

(b) The chief executive officer shall have control over the budget and the moneys appropriated or donated to the institute from private, local, state, and federal sources, as well as technical and professional income generated or derived from practice activities of the institute. However, professional income generated by university faculty from practice activities at the institute shall be shared between the institute and the university as determined by the chief executive officer and the appropriate university dean or vice president.

(c) The chief executive officer shall appoint representatives of the institute to carry out the research, patient care, and educational activities of the institute and establish the compensation, benefits, and terms of service of such representatives. Representatives of the institute shall be eligible to hold concurrent appointments at affiliated academic institutions. University faculty shall be eligible to hold concurrent appointments at the institute.

(d) The chief executive officer shall have control over the use and assignment of space and equipment within the facilities.

(e) The chief executive officer shall have the power to create the administrative structure necessary to carry out the mission of the institute.

(f) The chief executive officer shall have a reporting relationship to the Commissioner of Education.

(g) The chief executive officer shall provide a copy of the institute's annual report to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the chair of the State Board of Education. The annual report shall describe the expenditure of all funds and shall provide information regarding research that has been conducted or funded by the center, as well as the expected and actual results of such research.

(h) By August 1 of each year, the chief executive officer shall develop and submit to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the chair of the State Board of Education an annual operating budget detailing the planned use of state, federal, and private funds for the fiscal year.

(8)(a) Applications for Alzheimer's disease research funding may be submitted from any university or established research institute in the state. All qualified investigators in the state, regardless of institutional affiliation, shall have equal access and opportunity to compete for the research funding. Grants shall be awarded by the board of directors of the not-for-profit corporation, after consultation with the CURED advisory council created under s. 381.855, on the basis of scientific merit, as determined by an open, competitive peer

review process that ensures objectivity, consistency, and high quality. The following types of applications shall be considered for funding:

1. Investigator-initiated research grants.

2. Institutional research grants.

(b) To ensure that all proposals for research funding are appropriate and are evaluated fairly on the basis of scientific merit, the board of directors of the not-for-profit corporation, in consultation with the council of scientific advisors, shall appoint a peer review panel of independent, scientifically qualified individuals to review the scientific content of each proposal and establish its scientific priority score. The priority scores shall be forwarded to the council and must be considered in determining which proposals shall be recommended for funding.

(c) The council of scientific advisors and the peer review panel shall establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflict of interest and confidentiality which shall comply with National Institutes of Health standards. All employees, members of the board of directors, and affiliates of the not-for-profit corporation shall follow the same rigorous guidelines for ethical conduct and shall adhere to the same strict policy with regard to conflict of interest and confidentiality. A member of the council or panel may not participate in any discussion or decision with respect to a research proposal by any firm, entity, or agency with which the member is associated as a member of the governing body or as an employee or with which the

member has entered into a contractual arrangement. Meetings of the council and the peer review panels are subject to chapter 119, s. 286.011, and s. 24, Art. I of the State Constitution.

(12) The Legislature may annually appropriate funds to the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute at the University of South Florida for the purposes of this section.

Section 11. All appointments to the board of directors of the not-for-profit corporation for the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute that were not made in accordance with s. 1004.445, Florida Statutes, as amended by this act, shall expire June 30, 2006, but such appointees may continue to serve until their successors are appointed. This section shall take effect upon this act becoming a law.

Section 12. (1) The sum of $6 million is appropriated from the General Revenue Fund to the Biomedical Research Trust Fund in the Department of Health for fiscal year 2006-2007 for purposes of the James and Esther King Biomedical Research Program pursuant to s. 215.5602, Florida Statutes. From these funds up to $250,000 shall be available for the operating costs of the Florida Center for Universal Research to Eradicate Disease.

(2) The sum of $9 million is appropriated from the General Revenue Fund to the Biomedical Research Trust Fund within the Department of Health for purposes of the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program for the 2006-2007 fiscal year, and shall be distributed pursuant to s. 381.922, Florida Statutes, to provide grants to researchers

seeking cures for cancer, with emphasis given to the goals enumerated in s. 381.921, Florida Statutes. From the total funds appropriated, an amount of up to 10 percent may be used for administrative expenses.

(3) The sum of $15 million is appropriated from the General Revenue Fund to the Grants and Donations Trust Fund within the Department of Elderly Affairs for the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute at the University of South Florida for fiscal year 2006-2007 for the purposes of conducting research, developing and operating integrated data projects, and providing assistance to memory disorder clinics as provided under s. 430.502, Florida Statutes. Not less than 80 percent of these funds shall be distributed by the center as institutional research grants or investigator-initiated research grants.

Section 13. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2006.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7051 PCB ELT 06-01 Certificates of Need
**SPONSOR(S):** Elder & Long-Term Care Committee, Gibson
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 790

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Elder & Long-Term Care Committee | 7 Y, 0 N | Walsh | Walsh |
| 2) Health Care Appropriations Committee | 15 Y, 0 N | Speir | Massengale |
| 3) Health & Families Council | | Walsh | Moore |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

House Bill 7051 proposes to extend the moratorium on approval of certificates of need (CON) for nursing homes until July 1, 2011. The bill provides an exception to the moratorium for nursing homes with a 96 percent occupancy rate and a record of providing good quality care in an AHCA planning sub-district where the occupancy rate is 94 percent or above.

The bill allows a nursing home located in a county where the Nursing Home Diversion program or Florida Senior Care has been implemented to request a reduction in its annual Medicaid patient days that is a condition of its certificate of need until June 30, 2011.

The bill also relocates the sections on the CON moratorium from those statutes dealing with continuing care contracts to those dealing with certificate of need review.

The bill appears to have no fiscal impact on state and local government.

The bill provides it is effective upon becoming law.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government**—If a nursing home meets the criteria for the exception from the CON moratorium, it will be able to apply for an exemption from CON review for the addition of nursing home beds, and thus, will not incur the cost of a CON review.

B. EFFECT OF PROPOSED CHANGES:

**BACKGROUND**

During its 2001 session, the Legislature enacted CS/CS/CS/SB 1202,[1] which contained numerous provisions relating to long-term care facilities in Florida. In addition to other requirements, the bill required that notwithstanding the establishment of need as provided for in chapter 408, no certificate of need (CON) for additional community nursing home beds was to be approved by the Agency for Health Care Administration (AHCA) until July 1, 2006. The bill also provided legislative findings that

> [T]he continued growth in the Medicaid budget for nursing home care had constrained the ability of the state to meet the needs of its elderly residents through the use of less restrictive and less institutional methods of long-term care. It is therefore the intent of the Legislature to limit the increase in Medicaid nursing home expenditures in order to provide funds to invest in long-term care that is community-based and provides supportive services in a manner that is both more cost-effective and more in keeping with the wishes of the elderly residents of the state.[2]

Certificate of Need History

The CON is a regulatory review process administered by AHCA, which requires specified health care providers to obtain prior authorization before offering certain new or expanded services. Florida's CON program has been in operation since July 1973, and has undergone several changes over the years.

From 1974 through 1986, the specifics of the program were largely dictated by the federal National Health Planning and Resources Development Act, which established minimum requirements regarding the type of services subject to CON review, review procedures, and review criteria. Each state was required to have a CON program in compliance with those standards as a condition for obtaining federal funds for health programs. The federal health planning legislation was repealed in 1986.

Since 1987, Florida's Certificate of Need formula for community nursing home beds[3] provides an allocation of projected nursing home beds which will be needed in a specific AHCA CON subdistrict within a three-year time horizon. The formula considers the projected increase in the district population age 65 to 74 and age 75 and over, with the age group 75 and older given six times more weight in projecting the population increase. Projected future demand is adjusted by the number of existing and currently allocated beds and occupancy rates, producing a net need for additional nursing facility beds. Rules governing certificate of need provide that if current occupancy of licensed nursing home beds is less than 85 percent, the net need in a subdistrict is zero regardless of whether the formula otherwise would show a net need.

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[1] Chapter 2001-45, L.O.F.
[2] S. 651.1185(2), F.S.
[3] *See* Chapter 59C-1.036, F.A.C.

Prior to July 2001, projects to increase the number of community nursing home beds by construction of new facilities or addition to existing facilities required CON approval. Pursuant to statute, beginning July 2001 and continuing until July 2006, AHCA is prohibited from approving any project that would add to the total of community nursing home beds in any subdistrict. The prohibition does not apply to sheltered nursing home beds.[4] Projects that increase beds at one nursing home with an identical decrease at another facility in the same subdistrict may be approved, because the subdistrict total would not change.

Subsequent Legislative Modifications to Moratorium

There have been two modifications to the moratorium since 2001:

- Section 651.1185(4)(a), Florida Statutes permits beds to be added in a county that currently has no community nursing home beds and the lack of beds occurs because all nursing homes in that county that were licensed on July 1, 2001 have closed.

- Section 651.1185(5), Florida Statutes specifies that the moratorium does not apply in a county under 50,000 population. In such counties a nursing home may add up to ten beds or increase its beds by 10 percent, whichever is greater. In addition to other documentation, the facility must:
    - Certify that the facility has not had any class I or class II deficiencies within the 30 months preceding the request for additional beds.
    - Certify that the prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility had not had any class I or class II deficiencies since its initial licensure.
    - For a facility that has been licensed for less than 24 months, certify that the prior 6-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and that the facility has not had any class I or class II deficiencies since its initial licensure (s. 651.1185(5), F.S.).

Despite enactment of these exceptions, no expansion of nursing home beds has occurred since the moratorium was imposed.

Has the Nursing Home CON Moratorium Affected Access to Nursing Home Care?

After enactment of the moratorium, many believed that Florida's growing elder population would effect a substantial increase in nursing home occupancy rates, which would likely require an expansion of the number of nursing home beds. However, Florida's statewide nursing home occupancy rate in 2001 was 89.25 percent, and this occupancy rate has declined to a statewide occupancy rate for the year ending June 2005 of 87.41 percent.[5] The national occupancy rate was 82.4 percent in 2002, the latest year for which national data is available.[6] Occupancy rates in other states vary from a high of 94.1 percent in North Dakota, to a low of 68.4 percent in Oklahoma.[7]

The absence of a substantial increase in occupancy rate may be the result of a number of factors:

- Florida has increased its investment in home and community-based alternatives, particularly those programs targeted to the frailest seniors.

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[4] S. 651.1185(3), F.S. Sheltered beds are those which are a part of a continuing care retirement community.
[5] Source: Agency for Health Care Administration, Bill Analysis, January 23, 2006.
[6] Source: *Table 113, Nursing Home Beds, occupancy, and residents, according to geographic division and State: United States, 1995-2002.* National Center for Health Statistics. *Health, United States 2004 with Chartbook on Trends in the Health of Americans.* Hyattsville, Maryland: 2004. Available at http://www.cdc.gov/nchs/fastats/nursingh.htm.
[7] *Ibid.* According to *Table 113*, Florida's nursing home occupancy rate in 2002 was 85.6 percent.

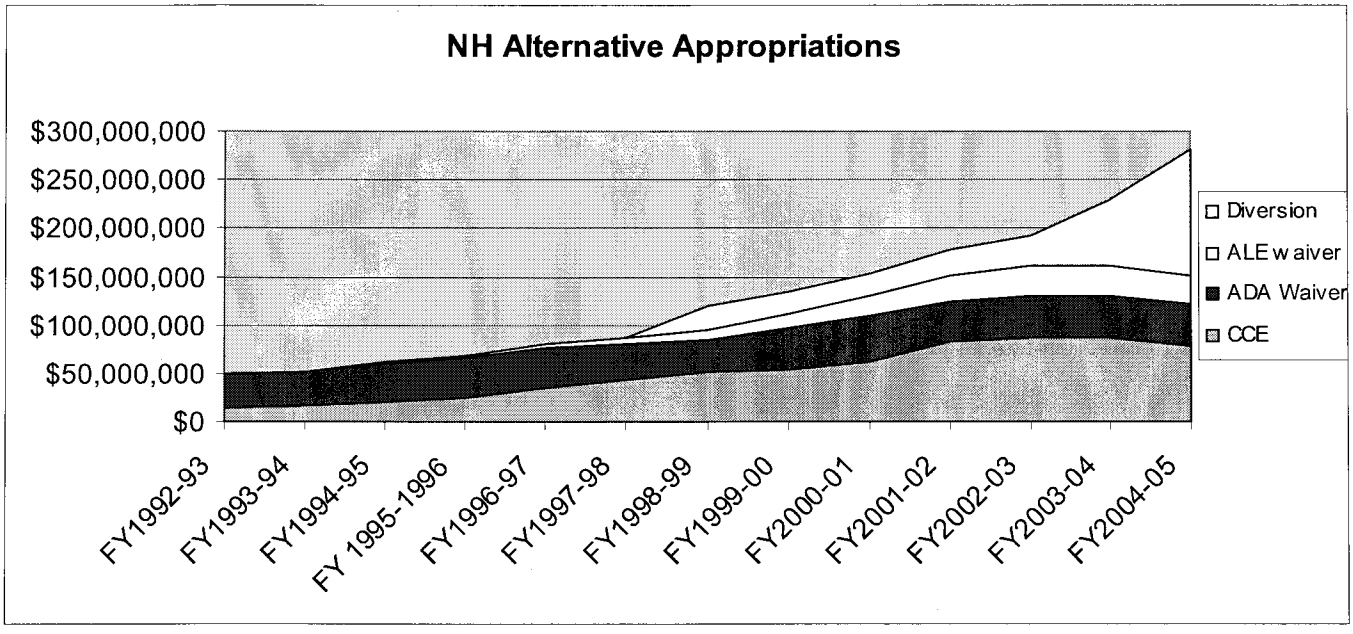
- Florida contains a robust assisted living industry. Many elderly persons prefer assisted living to placement in medically-oriented nursing homes.
- Increasing disability levels of individuals served in nursing homes suggests that those who are less disabled are being cared for in other settings.
- Most recent studies indicate a decline in the rate of functional disability among the U.S. elderly population. Although rates of disability declined for both sexes, the most significant decline in disability is among men, with the largest decline in disability being in men over the age of 80.[8]

Nonetheless, there are four areas in Florida where occupancy rates surpass the 94 percent occupancy threshold in the CON formula; each demonstrates a net bed need.

| County | Net Bed Need |
|---|---|
| Leon | 68 |
| Columbia, Hamilton and Suwanee | 70 |
| Nassau/North Duval | 30 |
| Seminole | 111 |

Resources Devoted to Home and Community-based Services

CS/CS/CS/SB1202 provided that the intent in limiting the growth in new nursing home beds was to increase investments in community-based long term care.[9] The chart below is the Appropriations history for Florida's four largest Home and Community-based programs serving the elderly: the Nursing Home Diversion Program, the Assisted Living for the Elderly Waiver, the Aging/Disabled Waiver, and the Community Care for the Elderly program:




[8] Costa, Dora L., 2002. "Changing Chronic Disease Rates and Long-term Declines in Functional Limitation Among Older Men." *Demography*. 39(1): 119-138.
[9] See fn. 1, *infra.*

Nursing Home Industry Recommendations Regarding the Moratorium

Representatives of the Florida Health Care Association (representing primarily for-profit nursing homes), the Florida Association of Homes for the Aging (representing primarily not for profit and religious nursing homes) and the Florida Long-Term Health Care Association (representing primarily for profit nursing home chains) report that members of their associations do not see a need to lift the moratorium at this time. All of the associations cautioned that future projections of Florida's elder population suggest that at some point there will be an increased demand for nursing home services.

Nursing home representatives recommended that, because of the lag time in nursing home construction and difficulty obtaining capital for construction, the state should continue to monitor potential demand and structure lifting of the moratorium sufficiently in advance of projected need. All of the provider associations suggested that there will be a likelihood that some counties or CON subdistricts may experience local population growth, which may create the need for a localized exception to the moratorium. In the nursing home industry, normal turnover produces a slight vacancy rate; that is, a facility with a 95 percent occupancy rate is, for practical purposes, full. Industry representatives suggested the state should provide an exception to the moratorium in the instance that the average occupancy rate in facilities in a CON subdistrict exceeds 96 percent for a specified period of time.

In addition, many Florida nursing homes operate with CON conditions that specify a certain number of Medicaid patient days the facility must serve. The increased investments in community-based long-term care—leading to a decrease in placements in nursing homes—have resulted in some facilities needing to request a reduction in those CON conditions. These reviews are time consuming for both the licensee and AHCA. As the Nursing Home Diversion program continues to expand[10] and Medicaid long-term care reform is implemented,[11] the necessity for these reviews will increase.

**PROPOSED CHANGES**

House Bill 7051 proposes to extend the moratorium on approval of certificates of need for nursing homes until July 1, 2011. The bill provides an exception to the moratorium. In an AHCA planning subdistrict where the nursing home occupancy rate is 94 percent or greater, a nursing home with a 96 percent or greater occupancy rate could add ten beds or 10 percent of the number of licensed beds, if the home had no class I or class II deficiencies in the past 30 months, and if any beds licensed before the exception was requested had been licensed and operational for at least 12 months. A nursing home may request additional beds under this exception as an exemption from full comparative review.

The bill allows a nursing home located in a county where the Nursing Home Diversion program or Florida Senior Care has been implemented to request a reduction in its annual Medicaid patient days that is a condition of its certificate of need until June 30, 2011. AHCA is required to automatically grant the request if the reduction is no more than 15 percent of the nursing home's annual condition. A nursing home may make only one request every two years and must make such request in writing 60 days in advance of making a reduction. The revised CON condition must be changed in the record and acknowledged in writing by the agency.

The bill relocates the sections on the nursing home CON moratorium from those statutes dealing with continuing care contracts to those dealing with certificate of need review for ease of use. This bill amends section 651.1185, Florida Statutes, transfers that section, and renumbers it as section 408.0435, Florida Statutes, and amends section 408.040, Florida Statutes.

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[10] Forty nine counties are approved for operation of nursing home diversion programs; 25 of those counties have active programs.

[11] Two pilot areas have been designated to implement Florida Senior Care, an integrated, fixed-payment delivery system for Medicaid recipients age 60 or older. One area--Osceola, Orange, Seminole, and Brevard counties—is to provide voluntary participation; the other—Escambia , Santa Rosa, Okaloosa, and Walton counties—is mandatory.

C. SECTION DIRECTORY:

**Section 1.** Transfers s. 651.1185, F.S., and renumbers and amends it as s. 408.0435, F.S.; extending the moratorium on nursing home CON until July 1, 2011; providing exceptions to moratorium.

**Section 2.** Amends s. 408.040(1), F.S.; providing for reduction in patient days as condition of CON in certain areas under certain conditions.

**Section 3.** Provides the act is effective upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If a nursing home meets the criteria for the exception from the CON moratorium, it will be able to apply for an exemption from CON review for the addition of nursing home beds, and thus, will not incur the cost of a CON review.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds, reduce the percentage of a state tax shared with counties or municipalities, or reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to certificates of need; transferring, renumbering, and amending s. 651.1185, F.S.; extending the moratorium on certificates of need for additional community nursing home beds until July 1, 2011; specifying nonapplication of a moratorium for the addition of nursing home beds in certain specified facilities; providing requirements and limitations; providing for repeal upon expiration of the moratorium; amending s. 408.040, F.S.; authorizing nursing homes in certain counties to request a reduction in their annual Medicaid patient days; requiring the Agency for Health Care Administration to automatically grant such a request if the nursing home meets certain conditions; providing for future repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 651.1185, Florida Statutes, is transferred, renumbered as section 408.0435, Florida Statutes, and amended to read:

408.0435 ~~651.1185~~ Moratorium on nursing home certificates of need.--

(1) Notwithstanding the establishment of need as provided for in this chapter ~~408~~, a ~~no~~ certificate of need for additional community nursing home beds may not ~~shall~~ be approved by the agency until July 1, 2011 ~~2006~~.

(2) The Legislature finds that the continued growth in the Medicaid budget for nursing home care has constrained the ability of the state to meet the needs of its elderly residents through the use of less restrictive and less institutional methods of long-term care. It is therefore the intent of the Legislature to limit the increase in Medicaid nursing home expenditures in order to provide funds to invest in long-term care that is community-based and provides supportive services in a manner that is both more cost-effective and more in keeping with the wishes of the elderly residents of this state.

(3) This moratorium on certificates of need shall not apply to sheltered nursing home beds in a continuing care retirement community certified by the former Department of Insurance or by the Office of Insurance Regulation pursuant to chapter 651.

(4)(a) The moratorium on certificates of need does not apply and a certificate of need for additional community nursing home beds may be approved for a county that meets the following circumstances:

1. The county has no community nursing home beds; and

2. The lack of community nursing home beds occurs because all nursing home beds in the county that were licensed on July 1, 2001, have subsequently closed.

(b) The certificate-of-need review for such circumstances shall be subject to the comparative review process consistent with the provisions of s. 408.039, and the number of beds may

not exceed the number of beds lost by the county after July 1, 2001.

This subsection shall be repealed upon the expiration of the moratorium established in subsection (1).

(5) The moratorium on certificates of need does not apply for the addition of nursing home beds licensed under chapter 400 to a nursing home located in a county having up to 50,000 residents, in a number not exceeding 10 total beds or 10 percent of the number of beds licensed in the facility being expanded, whichever is greater. In addition to any other documentation required by the agency, a request submitted under this subsection must:

(a) Certify that the facility has not had any class I or class II deficiencies within the 30 months preceding the request for addition.

(b) Certify that the prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility had not had any class I or class II deficiencies since its initial licensure.

(c) For a facility that has been licensed for less than 24 months, certify that the prior 6-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and that the facility has not had any class I or class II deficiencies since its initial licensure.

This subsection shall be repealed upon the expiration of the moratorium established in subsection (1).

(6) The moratorium on certificates of need does not apply for the addition of nursing home beds licensed under chapter 400 in a number not exceeding 10 total beds or 10 percent of the number of beds licensed in the facility being expanded, whichever is greater, if the facility meets the requirements of paragraph (a).

(a) In addition to any other documentation required by the agency, a request for the addition of beds under this subsection must certify that:

1. The facility has not had any class I or class II deficiencies within the 30 months preceding the request for addition;

2. The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 96 percent;

3. The occupancy rate for nursing home beds in the subdistrict is 94 percent or greater; and

4. Any beds authorized for the facility under this subsection before the date of the current request for additional beds have been licensed and operational for at least 12 months.

(b) A nursing home may request additional beds under this subsection as an exemption from the provisions of s. 408.036(1). The timeframes and monitoring process specified in s. 408.040(2)(a)-(c) apply to any exemption issued under this subsection.

(c) The agency shall count beds authorized under this subsection as approved beds in the published inventory of nursing home beds until the beds are licensed.

This subsection shall be repealed upon the expiration of the moratorium established in subsection (1).

Section 2. Paragraph (d) of subsection (1) of section 408.040, Florida Statutes, is redesignated as paragraph (e), and a new paragraph (d) is added to that subsection to read:

408.040 Conditions and monitoring.--

(1)

(d) If a nursing home is located in a county in which a long-term care community diversion pilot project has been implemented under s. 430.705 or in a county in which an integrated, fixed-payment delivery system for Medicaid recipients who are 60 years of age or older has been implemented under s. 409.912(5), the nursing home may request a reduction in the percentage of annual patient days used by residents who are eligible for care under Title XIX of the Social Security Act, which is a condition of the nursing home's certificate of need. The agency shall automatically grant the nursing home's request if the reduction is not more than 15 percent of the nursing home's annual Medicaid-patient-days condition. A nursing home may submit only one request every 2 years for an automatic reduction. A requesting nursing home must notify the agency in writing at least 60 days in advance of its intent to reduce its annual Medicaid-patient-days condition by not more than 15

percent. The agency must acknowledge the request in writing and must change its records to reflect the revised certificate-of-need condition. This paragraph expires June 30, 2011.

Section 3. This act shall take effect upon becoming a law.